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**HIGHLY CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER
INFORMATION REDACTED**

Transcript of Isaac D. Leventon

Date: July 22, 2021

Case: UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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Transcript of Isaac D. Leventon

1 (1 to 4)

1	IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION	1	APPEARANCES
2		2	ON BEHALF OF PLAINTIFFS
3	In re	3	UBS SECURITIES LLC AND UBS AG LONDON BRANCH:
4	HIGHLAND CAPITAL MANAGEMENT, L.P.,	4	Andrew B. Clubok Sarah Tomkowiak (Via Zoom) LATHAM & WATKINS LLP 555 Eleventh Street, N.W., Suite 1000 Washington, D.C. 20004 (202) 637-2200 andrew.clubok@lw.com sarah.tomkowiak@lw.com
5	Debtor.	5	
6		6	
7	UBS SECURITIES LLC AND UBS AG LONDON BRANCH,	7	
8		8	
9	Plaintiffs,	9	Shannon E. McLaughlin LATHAM & WATKINS LLP 885 Third Avenue New York, New York 10022-4834 (212) 906-4612 shannon.mclaughlin@lw.com
10		10	
11	VS. HIGHLAND CAPITAL MANAGEMENT, L.P.,	11	
12	Defendant.	12	ON BEHALF OF DEFENDANT
13		13	HIGHLAND CAPITAL MANAGEMENT, L.P.:
14	HIGHLY CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER INFORMATION REDACTED	14	Robert J. Feinstein (Via Zoom) PACHULSKI STANG ZIEHL & JONES LLP 780 Third Avenue, 34th Floor New York, New York 10017-2024 (212) 561-7700 rfeinstein@pszjlaw.com
15		15	
16	Videotaped Deposition of	16	
17	ISAAC D. LEVENTON	17	
18	Dallas, Texas	18	ON BEHALF OF THE WITNESS:
19	Thursday, July 22, 2021	19	Frances A. Smith ROSS & SMITH, PC 700 N. Pearl Street, Suite 1610 Dallas, Texas 75201 (214) 377-7879 frances.smith@judithross.com
20	9:55 a.m.	20	
21		21	
22		22	
23	Job No.: 386785	23	
24	Pages: 1 - 370	24	
25	Reported by: Micheal A. Johnson, RDR, CRR	25	
2		2	
1	Deposition of ISAAC D. LEVENTON, held at	1	APPEARANCES CONTINUED
2	the location of:	2	ON BEHALF OF THE WITNESS:
3		3	Debra A. Dandeneau Michelle Hartmann
4	Butler Snow LLP	4	BAKER & MCKENZIE, LLP 452 Fifth Avenue
5	2911 Turtle Creek Boulevard, Suite 1400	5	New York, New York 10018 (212) 626-4875 debra.dandeneau@bakermckenzie.com michelle.hartmann@bakermckenzie.com
6	Dallas, Texas 75219	6	
7	(469) 680-5500	7	
8		8	VIDEOPHOTOGRAPHER:
9		9	Brian Krieger
10	Pursuant to Notice, before Micheal A.	10	
11	Johnson, Registered Diplomate Reporter and	11	
12	Certified Realtime Reporter.	12	
13		13	
14		14	
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	9		11
1	MS. DANDENEAU: Debra Dandeneau from Baker	1	A Not personally.
2	McKenzie on behalf of Isaac Leventon.	2	Q Have you been deposed before?
3	MR. FEINSTEIN: On the Zoom, Robert	3	A Yes.
4	Feinstein of Pachulski Stang Ziehl & Jones,	4	Q How many times, approximately?
5	counsel to Highland Capital Management, LP.	5	A Over ten.
6	THE VIDEOGRAPHER: The court reporter	6	Q And were all of those matters in
7	today is Micheal Johnson representing PlanetDepos.	7	connection with your work with Highland Capital or
8	If the court reporter would please swear in the	8	an affiliated entity?
9	witness.	9	MS. SMITH: Objection, form.
10	ISAAC D. LEVENTON,	10	A I believe so.
11	called as a witness, having been duly sworn by a		11 BY MR. CLUBOK:
12	Notary Public, was examined and testified as		12 Q When was the last time you were deposed,
13	follows:		13 roughly?
14	EXAMINATION		14 A I'm trying to recall. I believe it may
15	BY MR. CLUBOK:		15 have been early this year.
16	Q Good morning. Please state your full		16 Q Have you ever served as a corporate
17	name.		17 representative or as the equivalent state law
18	A Isaac Daniel Leventon.		18 nomenclature?
19	Q And what's your home address?		19 A Yes.
20	<- HIGHLY CONFIDENTIAL		20 Q Roughly many times?
21	-->		21 A Most of the depositions I gave were in a
22	Q Roughly how long have you lived there?		22 corporate representative capacity. The majority
23	A Since 2013 or '14.		23 of them.
24	Q What's your current business address?		24 Q Who were you representing?
25	A 2515 McKinney Avenue.		25 A Depended on the case.
		10	
1	Q You are an attorney authorized to practice		
2	law, correct?		12 Q Can you identify as many entities as you
3	A Yes.		2 can recall that you have served as a corporate
4	Q In what states?		3 representative for in a deposition?
5	A Texas.		4 A The last one at the beginning of this
6	Q Just Texas?		5 year, I served as the corporate representative for
7	A I'm only barred in the state of Texas,		6 the plaintiffs in the lawsuit against Celtic
8	yes.		7 Pharma.
9	Q Where did you go to college?		8 Q Who were the plaintiffs?
10	A Emory University.		9 A You'd have to pull -- I don't recall the
11	Q What year did you graduate?		10 exact names of them. You'd have to look at the
12	A 2001.		11 style of the case, but it was all of them.
13	Q What was your degree?		12 Q Okay. And in past depositions, try to
14	A Political science.		13 identify as many entities as you can recall that
15	Q And where did you go to law school?		14 you've served as corporate representatives for in
16	A University of Texas School of Law.		15 deposition.
17	Q Where did -- when did you graduate?		16 A I really don't remember. I would have to
18	A 2005.		17 look back at the records on that. I don't recall
19	Q Did you do something between college and		18 which ones.
20	law school?		19 Q You can't -- other than this deposition
21	A Yes.		20 where you served as the representative against
22	Q What was that?		21 Celtic Pharma, you can't recall a single other
23	A I worked for the Centers for Disease		22 entity where you were designated as a corporate
24	Control.		23 representative, as you sit here today?
25	Q Did you know Dr. Fauci?		24 A There was a case related to the real
			25 estate fund a number of years back, but I don't

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	13		15
1 remember who I was representing as the witness in		1 Q Had they been a client of yours before you	
2 that case.		2 started working for them?	
3 Q So again, other than the deposition where		3 A No.	
4 you served as the representative against the		4 Q How did you come to be employed at	
5 Celtic Pharma, you cannot recall a single other		5 Highland Capital Management?	
6 entity that you can identify where you were		6 A Online application, interview.	
7 designated as a corporate representative; is that		7 Q Throughout the course of the deposition --	
8 correct?		8 I know there's lots of different -- some of the	
9 A First of all, it's Celtic, like -- spelled		9 entities have longer names, some of them have	
10 like the basketball team.		10 things like LP. If I refer to Highland Capital	
11 Q Although apparently pronounced		11 Management throughout the rest of this deposition	
12 differently.		12 as HCM, will you understand it to be that entity?	
13 A Correct. And now thinking about it		13 A So when you say HCM, you're referring to	
14 further, I represented Highland Capital		14 Highland Capital Management, LP, the debtor,	
15 Management, LP, as their corporate representative		15 correct?	
16 in the Crusader arbitration.		16 Q Correct.	
17 Q Other than that, can you identify any		17 A Okay. We can make that agreement.	
18 other entity on whose behalf you've served as a		18 Q Okay. Thank you. And who interviewed you	
19 corporate representative in any testimony?		19 for your job at HCM?	
20 A No, not sitting here today.		20 A A number of people interviewed me.	
21 Q In addition to your times being deposed as		21 Q Did you have an understanding as to who	
22 a corporate representative, have you been deposed		22 was the final decision-maker?	
23 in your individual capacity before today?		23 A No, I didn't actually.	
24 A Yes.		24 Q Who interviewed you? Identify the people	
25 Q How many times, roughly?		25 who interviewed you.	
	14		16
1 A Maybe two or three.		1 A Michael Colvin, Andrei Dorenbaum, Patrick	
2 Q Were those all in connection with your		2 Daugherty, John Honis, Scott Ellington, Brian	
3 work?		3 Collins and I believe Debbie Reynolds as well.	
4 A Yes.		4 Q And what was -- and you were hired by	
5 Q Okay. And what were the circumstances of		5 Highland Capital Management, correct?	
6 those depositions?		6 A Yes.	
7 A I honestly don't remember. I honestly		7 Q By the way, just to be clear, I may say	
8 don't recall.		8 Highland Capital Management, I may say HCM, I may	
9 Q You recall nothing whatsoever about the		9 say the debtor. You'll understand those are all	
10 two or three times that you've been deposed as an		10 interchangeable for Highland Capital Management,	
11 individual?		11 LP, the entity that you were hired by in 2009?	
12 A I really don't remember now.		12 A Okay.	
13 Q You were previously -- well, strike that.		13 Q Thanks. So what was the job you were	
14 After law school, can you walk us through		14 hired to do for HCM?	
15 your employment history, briefly?		15 A I was hired as litigation counsel.	
16 A Yes. Would you like me to do so?		16 Q What did that mean? What were your job	
17 Q Yes.		17 duties as litigation counsel?	
18 A Okay. I went to work for a litigation		18 A To work on and manage litigation.	
19 boutique for approximately five years here in		19 Q For whom?	
20 Dallas.		20 A For HCMLP and for its other affiliates.	
21 Q Named?		21 Q And did your role ever change?	
22 A Hartline, Dacus, Barger, Dryer & Kern.		22 A Yes.	
23 We'll spell it during a break. And then in		23 Q When?	
24 September 2009, I began working at Highland		24 A February 2011.	
25 Capital Management, LP.		25 Q How did your role change in February 2011?	

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	17		19
1 A I was promoted to assistant general		1 general counsels to him?	
2 counsel.		2 A I'm trying to remember the exact time	
3 Q Who promoted you?		3 frame. There were other assistant general	
4 A The company.		4 counsels at various points in time. Those are	
5 Q Was there a person who you understood to		5 individuals I recall held that title at one point	
6 have made the decision?		6 in time or another.	
7 A I don't know.		7 Q Okay. So you got some additional duties	
8 Q Who were you reporting to prior to your		8 that you just described when you became assistant	
9 promotion?		9 general counsel, but fair to say, you were still	
10 A Scott Ellington.		10 focused primarily on litigation?	
11 Q Did you always report to Scott Ellington		11 A Yes.	
12 throughout your tenure at HCM?		12 Q And did your role ever change after that?	
13 A Not that entire period. I believe there		13 A I mean, I took on additional duties and	
14 was a brief period where I did not report to him.		14 responsibilities as needed.	
15 Q When was that?		15 Q Did you -- and what were those?	
16 A Subsequent to my promotion but before		16 A Depended on which business unit needed	
17 Mr. Ellington became general counsel.		17 support and I would help them out.	
18 Q And when was that?		18 Q What do you mean?	
19 A I think it would have been most of 2011.		19 A I assisted the real estate team, I	
20 Q Okay. So -- and who did you report to		20 assisted the credit analysis team and I assisted	
21 during most of 2011?		21 the back office, accounting and operations.	
22 A Michael Colvin.		22 Q How did you assist the back office	
23 Q And then Mr. Colvin left and Mr. Ellington		23 accounting and operations?	
24 became general counsel?		24 A I worked on audit-related matters.	
25 A Correct.		25 Q What do you mean?	
	18		20
1 Q So before that time period and then after		1 A The preparation of audits.	
2 that time period, through your entire tenure at		2 Q Did you work on asset valuations ever?	
3 HCM, you reported to Scott Ellington, correct?		3 A No.	
4 A Correct.		4 Q What does the credit analysis team do?	
5 Q Did your duties change when you became		5 A They analyze and track and make	
6 assistant general counsel?		6 recommendations for investments in debt	
7 A Yes.		7 instruments.	
8 Q In what way?		8 Q And what was the assistance you provided	
9 A I took on nonlitigation management-related		9 to that group?	
10 duties.		10 A Credit analysis -- credit agreement	
11 Q Like what?		11 analysis as requested.	
12 A Corporate work, contract drafting and		12 Q What does that mean?	
13 review, and then supporting some of the business		13 A Mean if they asked me to look at a credit	
14 units, a lot of transactional work.		14 agreement, I would look at it and I would give	
15 Q Were there other assistant general		15 them my perspective on it.	
16 counsels at the time?		16 Q Okay. Did you ever get a promotion after	
17 A I believe the answer is yes.		17 2011?	
18 Q Do you know who they were?		18 A I had an additional job title added, but I	
19 A Thomas Surgent, Scott Ellington and Andrei		19 don't think it was really a promotion.	
20 Dorenbaum.		20 Q What was that?	
21 Q I see. So the four of you were -- when		21 A I believe I had a title of managing	
22 you were first promoted, were all assistant		22 director of distress added.	
23 general counsels to Mr. Colvin. And then when		23 Q What did that title entail?	
24 Mr. Colvin left, Mr. Ellington became the GC and		24 A I didn't really do any work under that	
25 you were all -- the remaining three were assistant		25 title.	

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	21		23
1 Q Why did you get that title, as far as you 2 know?		1 Q Did you physically work near him?	
3 A It was anticipated that certain members of 4 the legal team, including myself, would be 5 assisting with distressed assets and private 6 equity.		2 A We were in the same office facility, if 3 that's the question.	
7 Q Starting when?		4 Q Were you on the same floor?	
8 A Maybe 2018.		5 A The entire firm was on the same floor, so 6 yes.	
9 Q Who anticipated that?		7 Q Okay. So I take it you'd see him at least 8 on a relatively frequent basis around the office?	
10 A Mr. Ellington informed us that we were 11 going to be asked to help out with that role.		9 MS. SMITH: Objection, form.	
12 Q And -- but you never did help out with any 13 distressed assets after you got that job title?		10 A Not necessarily, no, actually.	
14 A Not really, no.		11 BY MR. CLUBOK:	
15 Q Were you ever given the title director of 16 private equity?		12 Q Did you have your own office?	
17 A Oh, that's what the title was. Yeah.		13 A No.	
18 Q Okay. Did you ever perform any functions 19 related to that title?		14 Q Did you sit out on a pod situation or what 15 was your physical layout for your workspace?	
20 A No, not really.		16 A We had an open floor plan and I was 17 sitting in the open floor plan.	
21 Q So your job really didn't change beyond 22 what you've described, from 2011 until you left 23 HCM, correct?		18 Q Who sat near you?	
24 A We had -- depending on the needs of the 25 company, things would -- things would change and		19 A When?	
	22		24
1 you'd have different tasks, but the basic nature 2 of my role didn't change.		1 me at that point in time, no.	
3 Q How often did you communicate with 4 Mr. Dondero during the course of your employment 5 at HCM?		2 Q How about Scott Ellington?	
6 A It really depended on when during that 7 employment. I was there for 11 years.		3 A He did not sit near me.	
8 Q How about in the last two years prior to 9 HCM going into bankruptcy, in the -- put yourself 10 back to the two years prior to the bankruptcy, 11 roughly how often were you directly communicating 12 with Mr. Dondero?		4 Q Where did he sit?	
13 A So you're talking approximately 2017 14 through 2019?		5 A He had an office.	
15 Q Yes.		6 Q How often did you speak with Scott 7 Ellington on average during that time period?	
16 A I don't know. Maybe once a month.		8 A 2017 to '19? I don't think I can give a 9 fair average estimate. It really would depend on 10 the ebb and flow of work.	
17 Q And would that communication be in person 18 or be by e-mail?		11 Q Well, would it be on a -- can you say 12 whether it would be roughly on a daily, weekly, 13 monthly basis?	
19 MS. SMITH: Objection, form.		14 A There were times when we'd speak multiple 15 times a day and there were times when I wouldn't 16 talk to him for two or three weeks.	
20 A It would depend on the communication.		17 Q Who did Scott Ellington report to during 18 the time period you worked -- were -- strike that.	
21 BY MR. CLUBOK:		19 After Scott Ellington became general 20 counsel, who did he report to?	
22 Q How often did you speak with Mr. Dondero 23 on average in 2017 through 2019?		21 A Mr. Dondero.	
24 A I really don't recall. I would have to 25 speculate.		22 Q Did you supervise anyone in the legal 23 department after you got your promotion to 24 assistant general counsel?	
		25 A I had younger associate attorneys that	

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	25		27
1 could be staffed on to matters of mine, but they		1 amount of deferred compensation.	
2 did not technically report to me.		2 Q And then did your compensation change	
3 Q Okay. But you would direct their work in		3 after the bankruptcy?	
4 some -- depending on the needs?		4 A No. Well, depends on your interpretation	
5 A Depending on the tasks, yes.		5 of whether it changed or not.	
6 Q Who were they?		6 Q Okay. In terms of dollar amounts, did	
7 A Stephanie Vitiello.		7 it --	
8 Q Anyone else?		8 A In terms of the dollar amounts I actually	
9 A Lauren Thedford.		9 received, yes, it changed.	
10 Q Anybody else?		10 Q In what -- roughly the magnitude, did you	
11 A No.		11 get half as much, two-thirds as much, twice as	
12 Q So Stephanie -- how did you pronounce --		12 much?	
13 how do you spell that last name?		13 A The UCC objected to the payment of my	
14 A V-i-t-i-e-l-l-o.		14 bonuses. So in the amounts that the UCC objected.	
15 Q She was an attorney there?		15 Q I see. And so what was your comp last	
16 A Yes.		16 year? I guess 2020 would have been the full year	
17 Q Does she still work at HCM?		17 that you were under the bankruptcy rules. What	
18 A No.		18 was your rough total comp?	
19 Q When did she leave HCM?		19 A I'm not exactly sure. It would have been	
20 A I don't know exactly.		20 my salary, plus not receiving the bonuses.	
21 Q Was she there until you left?		21 Q And what is your compensation at your new	
22 A Yes.		22 job?	
23 Q So she was still there until this year,		23 A Roughly flat, as compared to what I had	
24 2021?		24 been promised at Highland.	
25 A Yes.		25 Q Meaning what? Roughly 400,000 is what you	
	26		28
1 Q Where is she now in terms of employment?		1 expect to make this year?	
2 A She works at Skyview.		2 A I don't know the exact number, but it's	
3 Q How about Lauren? Does she work at		3 roughly flat, so it's whatever is reflected in the	
4 Skyview as well?		4 accounting records.	
5 A No.		5 Q What accounting records?	
6 Q Where is she now in terms of employment,		6 A The ones at Highland.	
7 if you know?		7 Q So whatever is reflected in terms of what	
8 A I don't.		8 you were slated to receive prebankruptcy is the	
9 Q Did you -- during the time you were at		9 amount -- is the amount you're expecting to get	
10 Highland, who paid your salary?		10 paid at your new job?	
11 A Highland Capital Management, LP.		11 A Correct.	
12 Q In the last year before the bankruptcy,		12 Q Did you have any other sources of income	
13 what was your total comp, roughly, from HCM?		13 other than HCM during your time there?	
14 A I would have to go back and look. It was		14 A Yes.	
15 maybe 3- or \$400,000.		15 Q What was that?	
16 Q And was that partially salary and		16 A I received a payment from NexPoint.	
17 partially bonus?		17 Q Okay. What's NexPoint?	
18 A Yes.		18 A NexPoint Advisors, LP.	
19 Q What was the rough split there?		19 Q And when did you receive a payment from	
20 A Maybe 50/50.		20 NexPoint?	
21 Q And did you have any other comp, in terms		21 A May of 2020.	
22 of equity or deferred compensation or anything		22 Q For -- what was the amount of that?	
23 else like that, in the final year that you worked		23 A It was approximately 300,000 something.	
24 at Highland before the bankruptcy?		24 Q And what was that for?	
25 A I think I might have had a very small		25 A It was the deferred compensation that I	

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	29		31
1 had been waiting for for three years, that the UCC		1 Q But not from the debtor, instead from	
2 chose not to pay me that had vested and earned.		2 NexPoint?	
3 Q I see. So NexPoint paid deferred		3 A I don't believe we discussed where it was	
4 compensation that you had been expecting to get		4 going to come from.	
5 paid from HCM prior to the bankruptcy?		5 Q So Mr. Collins just came to you one day	
6 A Correct.		6 and said you're going to be getting this money?	
7 Q And did -- is that 300,000, did that		7 A Yes.	
8 account for the total of deferred comp that you		8 Q And then it showed up and it was from	
9 believed you were due at that time?		9 NexPoint?	
10 MS. SMITH: Objection, form.		10 A It showed up and honestly I didn't even	
11 MR. CLUBOK: Sorry, what's the form		11 check where it came from until much later.	
12 objection?		12 Q When did you check?	
13 MS. SMITH: I think that's vague. He was		13 A There was a deposition earlier and -- I	
14 supposed to get deferred comp over multiple years.		14 apologize. I'm trying to remember. It had -- it	
15 MR. CLUBOK: Fair enough. Let me try --		15 had something -- no, there was a deposition	
16 thanks. Let me try to make it clearer.		16 earlier I think this year and I wasn't -- I didn't	
17 BY MR. CLUBOK:		17 know the answer and so I went back and looked.	
18 Q When you got that -- it was a lump-sum		18 Q I see. Did you look before the deposition	
19 payment that you got in May of 2020?		19 or after?	
20 A Yes.		20 A After.	
21 Q Was that amount supposed to be a total of		21 Q Did you -- did you ever discuss receiving	
22 all of the deferred comp that you believed you		22 that comp with anyone other than Mr. Collins?	
23 were owed at that point?		23 A I don't believe so, no.	
24 A I'm struggling with your question. It was		24 Q I'm setting aside your spouse if you have	
25 the amount of the deferred compensation that		25 one or significant other if you have one. But	
	30		32
1 was -- that I had earned and was due and payable		1 other than that, or your lawyers?	
2 to me in May of 2020.		2 A Actually, I was about to say. The answer	
3 Q Right. And without getting to whether		3 is, yes, I did discuss it with other people and	
4 that's accurate, you believed that there was a		4 that would be the attorneys sitting to the right	
5 total amount of deferred comp that was due to you		5 of me.	
6 from Highland Capital Management as of May 2020,		6 Q Right. So I'm going to exclude the	
7 correct?		7 attorneys representing you from this question or	
8 A Yes.		8 if you have a spouse or even a significant other.	
9 Q And the amount that NexPoint paid you		9 A I have a spouse.	
10 equalled the amount that you believed was due to		10 Q That's fine. So exclude that person.	
11 you from Highland Capital Management through that		11 Other than those people, did you ever discuss	
12 point?		12 receiving that comp with anyone until the	
13 A Yes.		13 deposition?	
14 Q Okay. And did you disclose that		14 A No.	
15 compensation to the debtor?		15 Q Not Mr. Ellington?	
16 A To the company generally? I mean, it came		16 A No.	
17 from the HR department of the debtor. So the		17 Q Not anybody else at the debtor other than	
18 debtor was aware of it.		18 Mr. Collins?	
19 Q Sorry. It came from the HR department of		19 A No.	
20 the debtor?		20 Q Where are you currently employed?	
21 A Yes.		21 A I'm currently employed by Skyview Group.	
22 Q What do you mean?		22 Q When did you leave HCM?	
23 A Mr. Brian Collins, who was a debtor		23 A On or about January 5th, 2021.	
24 employee, told me to -- that I would be receiving		24 Q Why did you leave HCM?	
25 the payment.		25 A My employment was terminated.	

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	33		35
1	Q	By whom?	1 general counsel at HCM?
2	A	Mr. Seery.	2 A I did due diligence and evaluated
3	Q	Did he or anybody tell you why?	3 litigation that SAS was considering investing in
4	A	Yes.	4 as a litigation funder.
5	Q	What did they tell you? Well, first of	5 Q Anything else for SAS Management?
6		all, who told you?	6 A That was really it.
7	A	Mr. Seery.	7 Q And so did you understand that work for
8	Q	Okay. What did he say?	8 SAS Management to be part of your job duties?
9	A	He said I was being terminated for breach	9 A It was something I was instructed to do
10		of fiduciary duty, for disclosing confidential	10 from my seat at Highland. It was a service I was
11		information and for working against the best	11 instructed to provide from my seat at Highland.
12		interest of the debtor.	12 Q And you had absolutely no idea what, if
13	Q	Did he give you any more details?	13 any, connection SAS Management had to Highland
14	A	I asked him for details and he refused to	14 when you were given these instructions?
15		provide them.	15 A That's not my testimony.
16	Q	When you were at Highland Capital	16 Q Did you have any idea -- strike that.
17		Management, you had an e-mail that used the	17 Did you have any idea about what, if any,
18		hcmlp.com and HighlandCapital.com domains at	18 connection SAS Management had to Highland when you
19		various points during your tenure there?	19 were given the instructions to provide services
20	A	Yes.	20 for it?
21	Q	Did you have any other e-mails that you	21 A I knew it had some connection to
22		used to conduct any business related to Highland	22 Mr. Ellington, but other than that, I really
23		prior to being terminated?	23 didn't know.
24	A	No.	24 Q What do you mean some connection to
25	Q	You never got e-mail at any other address	25 Mr. Ellington?
	34		36
1		other than ones that were hcmlp.com or	1 A He had some level of authority with the
2		HIGHLANDCAPITAL.COM that related in any way to the	2 organization.
3		work you did for HIGHLAND?	3 Q And you knew nothing more specific than
4	A	I don't want to say it related to the work	4 that?
5	I	I did at HIGHLAND, but I had another e-mail	5 A Not really, no.
6		address.	6 Q Well, when you say not really, do you mean
7	Q	What was that?	7 literally you knew nothing else when you were
8	A	I had an e-mail address at sasmgt.com.	8 instructed to do work for SAS other than
9	Q	What's SAS MGT?	9 Mr. Ellington had some connection to SAS and that
10	A	SAS Management.	10 was all you knew about SAS?
11	Q	What is that?	11 A I mean, sitting here today, I really don't
12	A	It was a litigation funding company.	12 recall anything else.
13	Q	Why did you have an e-mail address with	13 Q Do you today know anything more about
14		the litigation funding company called SAS?	14 SAS's connection, if any, to HIGHLAND?
15	A	From my role at HIGHLAND, I was instructed	15 A No, I don't.
16		to provide services to SAS Management and I did	16 Q As a lawyer working for HIGHLAND, were you
17		so.	17 ever asked to consider whether or not entities
18	Q	Who instructed you to do that?	18 were affiliated entities during the course of your
19	A	Mr. Ellington.	19 work?
20	Q	And was SAS owned by HIGHLAND?	20 MS. SMITH: Objection, form.
21	A	Actually, I don't know who owns SAS.	21 A That was outside of the scope of my job
22	Q	Is SAS affiliated with HIGHLAND?	22 duties. That was solely the purview of
23	A	I don't know the answer to that question.	23 MR. SURGEON in the compliance department.
24	Q	And what services were you instructed to	24 BY MR. CLUBOK:
25		provide to SAS Management while you were assistant	25 Q You said earlier that part of the work you

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	37		39
1 had to do at Highland was to do work both for 2 Highland and for Highland affiliates, right?		1 Q And they all assisted you in due diligence 2 work done on behalf of SAS while you were all 3 employed at Highland?	
3 A Correct.		4 A Not necessarily, no.	
4 Q Did you understand SAS to be a Highland 5 affiliate when you were asked to do work for it?		5 Q Well, Katie Irving did, correct?	
6 A I don't remember how the compliance 7 department classified SAS. I believe they 8 classified them as not an affiliate.		6 A Assisted me? No.	
9 Q But my question is did you understand 10 Highland to be an affiliate when you were asked to 11 do work for SAS?		7 Q Did Katie Irving perform work for SAS 8 while she was employed at HCM, as far as you know?	
12 A I understood that whatever the compliance 13 department and Mr. Surgeon's determination of what 14 was or wasn't an affiliate was the final 15 determination, and his determination, I believe, 16 is that it wasn't.		9 A I have a general understanding that she 10 did, but I don't really know what she did for that 11 entity or those entities.	
17 Q Why do you believe that?		12 Q Did you ever -- when was the last time you 13 performed work for SAS?	
18 A Because that's my recollection is that was 19 his determination.		14 A It's been a long time. Probably prior to 15 the bankruptcy sometime.	
20 Q Did he tell you that?		16 Q Did you ever disclose the existence of SAS 17 to the independent directors?	
21 A I'm trying to remember if he told me that 22 or if his determination was told to me by somebody 23 else.		18 MR. FEINSTEIN: Excuse me. Andy, if I 19 could interrupt at this point. For the record, 20 Rob Feinstein of Pachulski representing Highland 21 Capital Management. So this seem like as good a 22 time as any to put two statements on the record on 23 behalf of the debtor that I think will help make 24 the deposition go more smoothly.	
24 Q Did you specifically seek out that 25 information as to whether SAS was an affiliate of		25 First, obviously, Mr. Leventon was an	
	38		40
1 Highland?		1 in-house counsel at our client until he was 2 terminated earlier this year and that raises the 3 question which has been the subject of some 4 colloquy in prior depositions, about whether the 5 extent to which the debtor is going to invoke the 6 attorney-client privilege.	
2 A I don't believe I did, no.		7 As we advised counsel to the witness and 8 UBS beforehand, I'll just restate on the record, 9 if we have a problem with a question, if we think 10 that we want to invoke the privilege, you'll hear 11 from us. Otherwise, it's not our intention to 12 answer questions, as we were asked yesterday about 13 whether we're waiving the privilege or not, 14 invoking the privilege. As I indicated yesterday, 15 there are a number of bases under which the 16 privilege may not apply to certain discussions 17 between in-house counsel and others at the 18 company. But again, if you hear from us, you'll 19 know that we object; if you don't hear from us, 20 then you should assume that we're not objecting.	
3 Q Do you have any idea, as you sit here 4 today, who owns SAS?		21 The other thing I'd like to address is 22 because of Mr. Leventon's role as in-house 23 counsel, the debtor as defendant in the action 24 does have quite a number of questions it would 25 like to ask, but just take -- going back to our	
5 A I don't.			
6 Q Do you have any idea, as you sit here 7 today, whether or not Mr. Ellington has any 8 ownership interest in SAS?			
9 A I actually don't know.			
10 Q Did you talk to anybody else about work 11 you were doing for SAS other than Mr. Ellington?			
12 A Yes.			
13 Q Who?			
14 A Other individuals. I guess Mr. Sevilla.			
15 Q Who else?			
16 A Ms. Thedford.			
17 Q Who?			
18 A Thedford.			
19 Q Is that Lauren?			
20 A Yes.			
21 Q Okay. Who else?			
22 A Ms. Katie Irving.			
23 Q Who else?			
24 A That's who I can think of sitting here 25 today.			

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	41		43
1	colloquy yesterday with Frances, as she noted,	1	A Mr. Ellington.
2	this is a court-ordered deposition that was	2	Q The sole owner?
3	noticed by UBS. So our intention today is not to	3	A I don't know actually. I know he's one of
4	question the witness, to fully reserve our right	4	the owners.
5	to seek his deposition at a later date in this	5	Q Do you know any other owners of Skyview?
6	action, which we may or may not do, depending upon	6	A Sitting here today, I do not.
7	the testimony that he gives today. But we do want	7	Q I take it you have no equity in Skyview
8	to give UBS their full day of deposition as the	8	Group?
9	Court ordered.	9	A No.
10	MR. CLUBOK: Okay.	10	Q Do you expect to get any equity?
11	MR. FEINSTEIN: Thank you.	11	A I don't know if I will or not.
12	MR. CLUBOK: Thank you.	12	Q Has that been discussed at all?
13	BY MR. CLUBOK:	13	A There have been discussions but nothing
14	Q Mr. Leventon, do you need me to repeat the	14	really determinative.
15	question?	15	Q Okay. So there's been discussions where
16	A I actually don't remember what the	16	it's been held out to you that it's a possibility
17	question was at this point.	17	that you may one day get equity in Skyview Group,
18	Q I kind of don't either, so give me one	18	correct?
19	second here. Let's see if I can find it. Okay.	19	A Correct.
20	Ready to go.	20	Q And those discussions were with
21	Sir, did you ever disclose the existence	21	Mr. Ellington, right?
22	of SAS to the independent directors?	22	A I don't believe they were, actually.
23	A I don't ever remember discussing that	23	Q Who were they with?
24	entity with them one way or another.	24	A Mr. Collins.
25	Q Did you disclose the existence of SAS to	25	Q And you understood Mr. Collins to be
	42		44
1	counsel for the independent directors?	1	speaking on behalf of Mr. Ellington when he had
2	A I don't recall discussing that entity with	2	these discussions, or with his authority?
3	them at any point in time, no.	3	A I understood him to be speaking on behalf
4	Q Let's go back to your current employment.	4	of the company.
5	You said you work for the Skyview Group?	5	Q Okay. On behalf of Skyview Group?
6	A Yes.	6	A Correct.
7	Q Is that the only entity you work for	7	Q That's the same Mr. Collins that you said
8	currently?	8	is the only person you ever spoke to about getting
9	A No.	9	the roughly \$300,000 in May of 2020 from NexPoint,
10	Q Okay. Who else do you work for besides	10	correct?
11	the Skyview Group?	11	A Correct.
12	A Skyview Legal PC.	12	Q Was Mr. Collins working for NexPoint at
13	Q What's that?	13	the time?
14	A It is a dedicated law firm that provides	14	MS. SMITH: Objection, form.
15	services -- legal services to Skyview Group's	15	A Could you clarify your question, please?
16	clients.	16	BY MR. CLUBOK:
17	Q Do you work for any other entities?	17	Q Was Mr. Collins working for NexPoint in
18	A No.	18	May of 2020 when you had this discussion with him?
19	Q Who pays your compensation?	19	MS. SMITH: Objection, form.
20	A Today it's Skyview Group, but I think it's	20	A I don't know that I can answer the
21	switching over to Skyview Legal PC.	21	question as asked. Could you rephrase it, please?
22	Q And do you expect that to affect your	22	BY MR. CLUBOK:
23	total compensation?	23	Q Did you know -- well, was Mr. Collins
24	A No.	24	working for HCM in May of 2020, as far as you
25	Q Who owns Skyview Group?	25	know?

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<p>1 A Yes.</p> <p>2 Q Was Mr. Collins working for NexPoint in 3 May of 2020, as far as you know?</p> <p>4 A Can you define working? Because given the 5 situation, it has some complexities to it. Are 6 you asking if he was employed by NexPoint?</p> <p>7 Q Yes, was he employed by NexPoint?</p> <p>8 A Not that I'm aware of.</p> <p>9 Q But he was acting on NexPoint's behalf, as 10 far as you know, in May of 2020?</p> <p>11 A Under shared services agreements, yes.</p> <p>12 Q So when he arranged for you to get paid 13 \$300,000 in May of 2020, you understood him to be 14 doing that on behalf of NexPoint pursuant to the 15 shared services agreement NexPoint had with HCM at 16 the time, correct?</p> <p>17 A No.</p> <p>18 Q Okay. But shared services agreement at 19 the time authorized Mr. Collins to act on behalf 20 of NexPoint, as far as you know?</p> <p>21 A Sorry, let me rephrase. I disagree with 22 the premise of your prior question. I shouldn't 23 have answered no. I simply disagree with the 24 underlying premise.</p> <p>25 Q In what way?</p>	<p>45</p> <p>1 statement detail.</p> <p>2 Q Did you believe it was coming from HCM at 3 that time?</p> <p>4 A No.</p> <p>5 Q And so you knew it -- you didn't think it 6 was coming from HCM and you had no idea where it 7 was coming from until you checked after the 8 deposition you had earlier this year, correct?</p> <p>9 A I'm not saying I had no idea. I'm saying 10 I simply didn't check or look into it at all.</p> <p>11 Q What was the idea you had about the source 12 of the funds?</p> <p>13 A I didn't have an idea. I didn't check or 14 look, Mr. Clubok.</p> <p>15 Q Okay. So you had no idea about the source 16 of the funds other than it was not coming from 17 HCM, when you were told you were going to get 18 roughly 300,000 in May of 2020 by Mr. Collins, 19 correct?</p> <p>20 A I didn't look one way or another.</p> <p>21 Q I didn't ask you that. I said you had no 22 idea -- your testimony here today is you had no 23 idea about the source of the funds other than you 24 knew it was not coming from HCM, when you were 25 told you were going to get roughly \$300,000 in May</p>
<p>1 A At the time I received that payment, I 2 didn't know that it had come from NexPoint.</p> <p>3 Q Where did you believe it had come from at 4 the time?</p> <p>5 MS. SMITH: Andy, I'm going to object to 6 this line of questioning. I refrained to see how 7 far you were going, but this is not within the 8 scope of the deposition. This is supposed to be 9 about the temporary restraining order and the 10 preliminary injunction and the relationship to 11 Sentinel. And this -- I mean, I allowed several 12 minutes of questions on this, but this doesn't 13 seem at all related and now it's also repetitive.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q In May of 2020, where did you believe the 16 \$300,000 was coming from?</p> <p>17 A I didn't have a belief one way or another.</p> <p>18 Q Mr. Collins just said you were going to 19 get 300,000 and you had no belief at all the 20 source of those funds?</p> <p>21 A He said you're going to get the deferred 22 compensation that your -- that you earned and that 23 you're owed and that you've been waiting for for 24 three years, but he didn't mention where it was 25 coming from and I didn't check the bank account</p>	<p>46</p> <p>1 of 2020 by Mr. Collins, correct?</p> <p>2 MS. SMITH: Objection, form.</p> <p>3 A I didn't look one way or another.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q I'm not asking whether you looked. My 6 question is -- and I'll ask it one more time. 7 When you received -- is it true -- strike that.</p> <p>8 Is it true that you had no idea about the 9 source of the funds other than you knew it was not 10 coming from Highland Capital Management, when you 11 were told you were going to get roughly \$300,000 12 in May of 2020 by Mr. Collins?</p> <p>13 A I didn't look one way or another.</p> <p>14 Q I'm not asking you whether you looked. 15 I'm asking you whether you had an idea. You've 16 worked at Highland for a long time, you have 17 beliefs and ideas about how things operate. My 18 question is, did you have an idea in your head, a 19 belief or an idea or a thought about the source of 20 the funds other than knowing they did not come 21 directly from HCM?</p> <p>22 A I don't recall having any -- having any 23 thought process at the time because I simply 24 didn't look into it.</p> <p>25 Q What are your job -- what's your job title</p>

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	49		51
1 at Skyview?		1 A I'm not really sure.	
2 A I think it's counsel.		2 Q I didn't ask if you were sure. Do you	
3 Q Who do you report to at Skyview Group?		3 anticipate anyone else being a shareholder, as you	
4 A It's not really clear, actually. We're		4 sit here today?	
5 still kind of figuring things out.		5 MS. SMITH: Isaac -- excuse me.	
6 Q Who gives you directions on what to do?		6 Mr. Leventon, before you answer, make sure that	
7 A Really nobody.		7 you do not divulge any attorney-client privileged	
8 Q You just have a sense of what to do		8 information with either Skyview Legal PC or in	
9 without anyone telling you?		9 your role as counsel to Skyview Group.	
10 A I mean, we talk internally about tasks and		10 A There's been no determination. I don't	
11 we divide them up and I take the ones that I need		11 have an anticipation one way or another.	
12 to do and take care of and I take care of them.		12 BY MR. CLUBOK:	
13 Q Is there anyone you consider to be in any		13 Q Do you have an anticipation of what level	
14 sort of management position above you other than		14 of -- I assume as a shareholder you have some	
15 Mr. Ellington?		15 equity interest?	
16 A Maybe Mr. Sevilla, but that's not really		16 A Correct.	
17 clear.		17 Q Do you have any anticipation of roughly	
18 Q What about Skyview Legal PC? Do you have		18 what equity interest you will have in Skyview	
19 a job title there?		19 Legal PC?	
20 A Yes.		20 A No.	
21 Q What's that?		21 Q You don't know if it's 1 percent or	
22 A Shareholder.		22 50 percent?	
23 Q How many shareholders are there at Skyview		23 A Correct.	
24 Legal PC?		24 Q And has there been any discussion to that	
25 A We're just forming the entity, so we		25 effect?	
	50		52
1 actually haven't determined that yet.		1 A No.	
2 Q Has it been established already?		2 Q So the amount of equity ownership in	
3 A It's been formed, but we haven't executed		3 Skyview is still to be determined, Skyview	
4 the bylaws yet.		4 Legal PC?	
5 Q Who are the shareholders that you		5 A Correct.	
6 anticipate?		6 Q And you anticipate the ultimate	
7 MS. SMITH: Objection, form.		7 decision-maker for that will be Scott Ellington,	
8 A We really haven't figured that out yet.		8 correct?	
9 BY MR. CLUBOK:		9 A No.	
10 Q Well, you said that you anticipate being a		10 Q Who will be the ultimate decision-maker	
11 shareholder, right?		11 for that?	
12 A Yes.		12 A Collectively, the attorneys that will be	
13 Q Has there already been anything signed to		13 employed by Skyview Legal PC.	
14 make that happen or is that just something you		14 Q Whose idea was it to create Skyview	
15 believe will happen?		15 Legal PC?	
16 A The latter. I don't think we have		16 MS. SMITH: I'm going to interrupt and	
17 anything executed yet.		17 again object. I feel like I'm giving you a lot of	
18 Q Other than yourself, who else do you		18 latitude, but this is well beyond the scope of	
19 anticipate being a shareholder of Skyview		19 what Judge Jernigan ruled would be the scope of	
20 Legal PC, as you sit here today?		20 the deposition and the topics.	
21 A Mr. Sevilla.		21 BY MR. CLUBOK:	
22 Q Who else?		22 Q Whose idea was it to create Skyview	
23 A I don't know.		23 Legal PC?	
24 Q Just you and Sevilla and no one else, as		24 A I need to confer with my counsel for a	
25 you sit here today?		25 moment as to attorney-client privilege.	

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	53		55
1	Q Okay. We'll come back to that, then.	1	A No. Well, I don't think I did, no.
2	When did you start working at Skyview	2	Q And I apologize if I asked you this, but
3	Group?	3	do you know who -- sorry. You said Mr. Ellington
4	A March 1st, 2021.	4	is the 100 percent owner of Skyview Group, as far
5	Q Unless I say otherwise, let's assume when	5	as you know?
6	I say Skyview, we're talking about Group, the	6	A That was not my testimony.
7	entity that already exists, as opposed to the one	7	Q Mr. Ellington is the only owner of Skyview
8	you're talking about forming that also has Skyview	8	Group that you're aware of, correct?
9	in the name; is that okay?	9	A He's the only one I can think of, yes.
10	A I disagree with one premise of what you	10	A He's the only person I can think of, yes.
11	just stated.	11	Q Are you aware of any others?
12	Q What's that?	12	A No.
13	A Skyview Legal PC is a created and existing	13	MS. SMITH: Objection, form.
14	entity.	14	BY MR. CLUBOK:
15	Q So who are the current shareholders of	15	Q Okay. Does that entity go by any other
16	Skyview Legal PC?	16	name?
17	A We don't have a shareholders agreement	17	A It used to be called Highgate.
18	yet. We just have a filing with the State of	18	Q Why the switch? Do you know?
19	Texas that forms the entity.	19	A Marketing or branding decided to change
20	Q And you didn't have to identify the owners	20	the name.
21	in that filing?	21	Q Okay. Any other names?
22	A I believe I'm the individual who's the	22	A No.
23	contact person with the State for that entity.	23	Q The work address you previously provided,
24	Q Okay. Well, I'll try to say Skyview	24	25 is that the principal place of business for
25	Group, then, to the best of my ability.	25	Skyview Group?
	54		56
1	What is your -- I take it you don't have	1	A Yes.
2	any current job duties with respect to Skyview	2	Q How many employees does it have, roughly?
3	Legal PC yet?	3	A Thirty to 40.
4	A I do.	4	Q Are they almost all ex-Highland Capital
5	Q What are they?	5	Management employees?
6	A Providing service to -- legal service to	6	A Yes.
7	clients.	7	Q Are they all ex-HCM employees?
8	Q So you've already started doing that?	8	A No.
9	A Yes.	9	Q Are there any other entities that operate
10	Q Who are your clients?	10	11 from the same address other than Skyview Group and
11	A I have a nondisclosure agreement with	11	Skyview Legal PC?
12	clients that are not affiliated with Mr. Dondero	12	MS. SMITH: Objection, form.
13	and so I am not at liberty to go into that	13	A Yes.
14	information at this time.	14	BY MR. CLUBOK:
15	Q Okay. Aside from clients who are not	15	Q What are they?
16	affiliated in any way with Mr. Dondero or	16	A NexBank.
17	Mr. Ellington, who are your clients?	17	Q Okay. What else?
18	MS. SMITH: Objection, form.	18	A NexPoint, I believe.
19	A I would really have to think about it.	19	Q What else?
20	BY MR. CLUBOK:	20	A I think that's it.
21	Q Can you identify any clients who aren't	21	Q And do you current --
22	affiliated with Mr. Dondero or Mr. Ellington?	22	A Although there are other tenants in the
23	A Sitting here today, no.	23	building. I just don't know who they are.
24	Q Okay. What -- did you have any role in	24	Q What about CPCM?
25	the formation of Skyview Group?	25	MS. SMITH: Objection, form.

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	57		59
1 A CPCM is a wholly owned subsidiary of		1 pay me my unpaid bonus amounts.	
2 Skyview Group.		2 Q Did you still have unpaid bonus amounts?	
3 BY MR. CLUBOK:		3 A Yes.	
4 Q Are there other wholly owned subsidiaries		4 Q Is that amounts from May 2020 through the	
5 of Skyview Group?		5 time of your employment, or something else?	
6 A I don't know.		6 A That's one time period, but that's not all	
7 Q That's the only one you know of, CPCM?		7 of them.	
8 A Correct.		8 Q I thought you said before that in May of	
9 Q What is CPCM?		9 2020, you got trued up to the amount that you	
10 A It is a claims holding company.		10 believed you were owed at that point?	
11 Q For what kind of claims?		11 A No.	
12 A Claims in the debtor's bankruptcy.		12 Q Roughly how much more did you believe you	
13 Q For what?		13 were owed in unpaid bonuses beyond what you	
14 A I believe mostly for employee compensation		14 received in May 2020 from NexPoint?	
15 that was due and payable but not paid.		15 MS. SMITH: Objection, form.	
16 Q And that would include your compensation?		16 A So you're using the wrong nomenclature.	
17 A Yes.		17 There's bonuses and then there's deferred	
18 Q And that would be the -- roughly the same		18 compensation.	
19 amount that you received from NexPoint in May of		19 BY MR. CLUBOK:	
20 2020?		20 Q Okay. Roughly how much in bonuses do	
21 MS. SMITH: Objection, form.		21 you -- did you believe you were still owed?	
22 A Not necessarily, no.		22 A As of what date?	
23 BY MR. CLUBOK:		23 Q As of the date of your termination with	
24 Q Is it?		24 HCM.	
25 A No, not necessarily, no.		25 A I don't recall the exact number. It would	
	58		60
1 Q What's the amount of that claim with		1 have been several hundred thousand dollars.	
2 respect to you?		2 Q When was the last time you spoke with	
3 A I'd have to look at the -- I don't recall.		3 Scott Ellington?	
4 Q Roughly. Is it --		4 MS. SMITH: Objection, form.	
5 A It's whatever is in the -- I don't recall,		5 A Three weeks ago, maybe a month.	
6 honestly.		6 BY MR. CLUBOK:	
7 Q Did you sell your claim to CPCM?		7 Q Before he left for his vacation or since	
8 MS. SMITH: Objection, form.		8 he's left?	
9 A I assigned it to CPCM.		9 A Before.	
10 BY MR. CLUBOK:		10 Q Have you communicated with him in any way	
11 Q For what consideration?		11 since he started the vacation he's currently on?	
12 A Employment at Skyview.		12 A Have I communicated with him in any way?	
13 Q That was a condition of your employment at		13 I've been -- actually, no, I haven't directly	
14 Skyview?		14 communicated with him at all.	
15 MS. SMITH: Objection, form.		15 Q What were you thinking about there?	
16 A I believe that's right. I don't recall		16 A I received a forward of an e-mail that he	
17 exactly, but I think that's right. Maybe. I take		17 wrote, but that's it.	
18 it back actually. I'm going to change my		18 Q An e-mail to whom?	
19 testimony. I don't remember, honestly. It's		19 A Brigid Brewer.	
20 whatever is reflected in the documents.		20 Q And he wrote that while he was on his	
21 BY MR. CLUBOK:		21 trip?	
22 Q You don't remember what the consideration		22 MS. SMITH: Objection.	
23 is for assigning your claim in the bankruptcy case		23 Make sure that you're not divulging any	
24 to CPCM?		24 privileged information.	
25 A I believe Skyview indicated that it would		25	

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1	BY MR. CLUBOK:	1	A No, actually, I wouldn't. Who knows phone numbers these days.
2	Q I'm not asking for the substance. I'm	2	Q Well, if you looked at your phone, you
3	asking for the timing of when you received this	3	could identify the phone number Mr. Ellington
4	e-mail. When -- you received this --	4	texted you from?
5	A I didn't receive the e-mail from	5	A Probably, yes.
6	Mr. Ellington.	6	Q And Mr. Ellington uses different phones,
7	Q You received a forward of it?	7	8 correct?
8	A Correct.	8	MS. SMITH: Objection, form.
9	Q From Brigid?	9	A I don't really know what he does.
10	A Correct.	10	BY MR. CLUBOK:
11	Q And that was dated when, roughly?	11	Q Well, you've gotten texts from him from
12	A I don't remember. Sometime over the last	12	13 different phone numbers, correct?
13	two weeks.	13	A I don't know that that's true actually.
14	Q Okay. Other than that, have you in any	14	No.
15	way received any communications from Mr. Ellington	15	Q Were there any documents that you
16	since he left for Africa?	16	17 identified that were responsive to the request but
17	A No.	17	18 that you deemed to be privileged?
18	Q Did you ever get text messages from	18	MS. SMITH: Objection, form.
19	Mr. Ellington?	19	A I'm going to defer to my counsel on what
20	A Yes.	20	documents we gathered and how we handled them. If
21	Q Do you have -- by the way, did you search	21	there's a privilege issue, I'm sure they can
22	for documents in connection with this adversary	22	address it.
23	proceeding?	23	BY MR. CLUBOK:
24	A Yes.	24	Q Well, did you -- who made the decision as
25	Q Where did you search?	25	
	62		64
1	A On my phone.	1	1 to whether or not documents that you reviewed were
2	Q Where else?	2	2 relevant or not, you or --
3	A On my personal e-mail.	3	A The counsel sitting to my right.
4	Q What's your personal e-mail address?	4	Q Did you identify documents? I mean, did
5	<-- HIGHLY CONFIDENTIAL -->	5	you turn over your phone and have them search your
6	Q Do you have any other personal e-mail	6	phone?
7	addresses?	7	A No.
8	A No.	8	Q Okay. So who did the search of your
9	Q Okay. Where else did you search for	9	phone?
10	documents, if anywhere?	10	A I did the search.
11	A That's it.	11	Q And so did -- you were responsible for
12	Q Did you take any physical documents at all	12	looking at your phone and seeing if there were
13	from HCM when you left or retain any that you had	13	documents responsive to our request, correct?
14	when you left?	14	A I was responsible for locating everything
15	A Yes.	15	that could potentially be responsive and turning
16	Q What did you retain?	16	it over to counsel.
17	A My personnel file. So like my pay stubs	17	Q I'm going to specifically ask about the
18	and those sorts of documents.	18	search of your phone. Did anyone search your
19	Q Anything else besides your personnel file?	19	phone for responsive documents other than you?
20	A I'm trying to remember. I think that was	20	A No.
21	it. I may have picked up like some CLE materials	21	Q Okay. So you made the sole decision when
22	that I hadn't read yet, but I think that was it.	22	you looked at documents or text messages on your
23	Q Mr. Ellington, when he -- you would know	23	phone as to whether or not they were responsive or
24	the phone number that Mr. Ellington texts you	24	not?
25	from, presumably, from your phone, right?	25	A No, that is incorrect.

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	65		67
1 Q Okay. You made the decision of which		1 was working with Skyview Group but she wasn't yet	
2 documents to share with your attorneys to		2 on maternity leave?	
3 determine whether or not they were responsive?		3 MS. SMITH: Objection, form.	
4 A I made the decision as to which documents		4 A I don't believe so.	
5 to provide to my attorneys for them to make the		5 BY MR. CLUBOK:	
6 determination as to responsiveness and/or		6 Q Have you spoken to her about any	
7 privilege.		7 work-related issues since she left HCM?	
8 MR. CLUBOK: And I think, for the record,		8 A No. We just talk about her babies.	
9 we've received zero documents from Mr. Leventon in		9 Q Okay. How long is her maternity leave?	
10 production. Correct me if I'm wrong, Ms. Smith,		10 MS. SMITH: Objection, form.	
11 and I don't think we received a privilege log so		11 A I don't know, Mr. Clubok.	
12 we're going to want to work on that.		12 BY MR. CLUBOK:	
13 MS. SMITH: That's incorrect. I did		13 Q Do you have a --	
14 provide a privilege log.		14 A Her maternity leave is whatever is	
15 MR. CLUBOK: Okay. I apologize if that's		15 necessary and appropriate for a woman who's had	
16 the case. Ms. McLaughlin will know better than I		16 twins, and that is not a place where a man will	
17 so we'll double-check that at the break.		17 venture to render an opinion.	
18 BY MR. CLUBOK:		18 Q It depends if they're, I suppose, HR. Is	
19 Q When was the last time you spoke with		19 Mr. Collins your HR person?	
20 Mr. Sevilla?		20 A To be clear, I'm not in HR so I would not	
21 A Maybe two weeks ago, week and a half.		21 venture an opinion as to what is the appropriate	
22 Q When was the last time you spoke with		22 length of maternity leave for a woman who's had	
23 Mr. DiOrio?		23 twins.	
24 A Yesterday.		24 Q Who decides that at Skyview Group?	
25 Q Did you speak about this matter at all?		25 A I don't know.	
	66		68
1 A Very briefly.		1 Q Is Mr. Collins in the HR group?	
2 Q What did you say?		2 A I believe he's the head of HR.	
3 A We just exchanged basically the dates when		3 MR. CLUBOK: This is probably a good time	
4 we were going to be deposed.		4 to take a break if you guys want to take a break.	
5 Q Anything else?		5 THE WITNESS: We can keep going.	
6 A That's pretty much it.		6 BY MR. CLUBOK:	
7 Q When was the last time you spoke with		7 Q In that case, then, I'll ask you this?	
8 Ms. Irving?		8 THE WITNESS: They want a break.	
9 A It's been months.		9 MS. SMITH: I would like to take a break.	
10 Q Ms. Irving works at Skyview Group?		10 BY MR. CLUBOK:	
11 MS. SMITH: Objection, form.		11 Q You know what? I'm going to ask one last	
12 A Yes, but she's on maternity leave.		12 thing to just finish this topic up and I think it	
13 BY MR. CLUBOK:		13 will then -- to really start -- to prepare for	
14 Q When did she start working there?		14 this deposition, did you do anything other than	
15 A I don't know.		15 meet with your lawyers?	
16 Q Did you hire her?		16 A No.	
17 A Did I hire her? No.		17 Q Did you review any documents at all in	
18 Q Was she ever there before she went on		18 anticipation of this deposition?	
19 maternity leave after her employment at HCM?		19 A No.	
20 A I don't know.		20 Q Did you look at any documents this	
21 Q Did you ever -- have you talked to her at		21 morning?	
22 all since she left HCM?		22 A No.	
23 A Yes.		23 Q And roughly how long did you spend with	
24 Q Okay. And when you spoke with her, was		24 your attorneys preparing for this deposition,	
25 there ever a time when you spoke with her that she		25 total?	

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1 A Maybe five or six hours.		1 We're now returned to our regularly scheduled	
2 Q When was that?		2 program.	
3 A Monday.		3 Mr. Leventon, you're still under oath,	
4 Q Okay.		4 right?	
5 MR. CLUBOK: That's it. Let's take our		5 A Yes, sir.	
6 break.		6 Q Okay. Sir, you were aware that UBS filed	
7 THE VIDEOGRAPHER: We are off the record		7 litigation in 2009 against Highland's affiliated	
8 at 11:01 a.m.		8 entities, correct?	
9 (Recess taken from 11:01 a.m. CDT to		9 A So aware that UBS had filed litigation	
10 11:19 a.m. CDT)		10 against Highland Capital Management and two funds	
11 THE VIDEOGRAPHER: The time is 11:19 a.m.		11 managed by it.	
12 We are back on the record.		12 Q Well, it was Highland Capital Management	
13 MS. SMITH: Normally the practice on these		13 plus CDO Fund and SOHC, as colloquial names for	
14 depositions of nonparties is if someone else wants		14 those funds, without laying out their whole formal	
15 to ask questions, then they allocate between		15 names, correct?	
16 themselves the time. And so we are presenting		16 A Those would be the colloquial names I	
17 Mr. Leventon today for his seven hours and today		17 would use, but if we want to be specific, we	
18 is the day. We had a motion to compel and a		18 probably should identify the entities.	
19 motion to quash and nowhere during that time did		19 Q Yeah. And there may have been a number of	
20 the debtor raise any indication that they needed		20 entities and subs, but it certainly included	
21 separate depositions. We're not presenting		21 Highland CDO Opportunity Master Fund, LP, which we	
22 Mr. Leventon for 14 hours. So you might want to		22 shorthanded would refer to as CDO Fund throughout	
23 check on the break or at lunch and see. We -- you		23 the litigation; is that fair?	
24 know, we objected yesterday, but we gave		24 A I believe that was the CDO Fund entity	
25 Mr. Feinstein his time and allowed him to answer		25 that was the named defendant in that matter, yes.	
	70		72
1 questions and we're willing to do that again		1 Q And also there was Highland Special	
2 today.		2 Opportunities Holding Company, which we routinely	
3 MR. CLUBOK: Okay. And, you know, it's --		3 referred to as SOHC throughout that litigation,	
4 I don't mind if you-all want to make your record		4 correct?	
5 to use this time. We won't count this as part of		5 A That's correct.	
6 the deposition, this dispute.		6 Q And then there was also as defendant in	
7 MS. SMITH: That's fine.		7 that litigation an entity called Highland	
8 MR. CLUBOK: My -- our -- we have no view		8 Financial Partners, which we often called HFP,	
9 on it yesterday whether, you know, we were		9 correct?	
10 perfectly fine since we had time left to give that		10 A Not in 2009, no.	
11 time to the debtor. It's between you-all to work		11 Q Right. But -- okay. The litigation by --	
12 out whether -- you know, whether and when the		12 certainly by 2012 included as defendants, Highland	
13 debtor gets to depose Mr. Leventon. From our		13 Financial Partners, which we often referred to as	
14 perspective, but anyway, I don't know if		14 HFP?	
15 Mr. Feinstein wants to make some other comment on		15 A Highland Financial Partners, LP, which we	
16 the record, it's fine.		16 would refer to as HFP, yes, was a defendant.	
17 MR. FEINSTEIN: Only briefly. It's not		17 Q And Strand was also a defendant in the	
18 appropriate to debate this on the record, but I		18 litigation ultimately, correct?	
19 would refer counsel to her very fierce statements		19 A Strand Advisors, Inc., I believe that's	
20 yesterday about -- she's done a 180, but we can		20 correct.	
21 take this up off line. Thank you. Why don't you		21 Q Which we would shorthand by just referring	
22 proceed, Andy.		22 to often as Strand?	
23 MR. CLUBOK: Okay. Thank you.		23 A That may have been your practice.	
24 BY MR. CLUBOK:		24 Q There was also an entity that was called	
25 Q Sorry for that commercial interruption.		25 Highland Credit Opportunities CDO, LP, that we	

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<p>1 sometimes referred to as Credit Opportunity or 2 Credit Opps, correct? 3 MS. SMITH: Objection, form. 4 A I believe that's right, but I probably 5 would need to see the style of the case in order 6 to identify the exact entity because a lot of them 7 had very similar names.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q And that entity was later changed to a 10 name that we have shorthanded since as 11 Multi Strat, correct?</p> <p>12 A Again, I would need to look at the style 13 of the case to match up the exact entities.</p> <p>14 Q Okay. But colloquially as, you know, you 15 were on this litigation for a long time --</p> <p>16 A Yes.</p> <p>17 Q -- we spoke many times, lots of e-mails 18 and documents and hallway conversations, including 19 during court, and fair to say that there was an 20 entity that we sometimes shorthand as Highland 21 Credit Opportunities that we've since shorthanded 22 as Multi Strat?</p> <p>23 A That's fair to say, yes.</p> <p>24 Q Okay. Thanks. Now, what role did you 25 play in managing that litigation for HCM and the</p>	<p>73</p> <p>1 the person who took responsibility that the 2 responses to UBS's discovery requests in that 3 litigation during that time period of roughly 2011 4 to 2013 were properly answered?</p> <p>5 A Kevin Rabinowitz</p> <p>6 Q Who was outside counsel at the time?</p> <p>7 A Correct.</p> <p>8 Q Okay. And who inside was primarily 9 responsible for managing your outside counsel to 10 ensure that they did that work properly?</p> <p>11 A I was primarily responsible at that point 12 for managing the litigation from the in-house 13 side.</p> <p>14 Q And did that responsibility for managing 15 the -- by the way, if I say the UBS litigation in 16 New York, will you understand that I mean this 17 case that we referred to where we've identified 18 the parties?</p> <p>19 A Yes, but I think there were also like 20 three different cause numbers at some point.</p> <p>21 Q Right. There was different causes that 22 were all ultimately consolidated into one matter. 23 And can I collectively refer to those actions as 24 the UBS New York litigation against Highland, just 25 to -- to shorthand it?</p>
<p>74</p> <p>1 other affiliates?</p> <p>2 A During what time period?</p> <p>3 Q From 2009 till you were terminated?</p> <p>4 A I didn't have a consistent role during 5 that entire period of time.</p> <p>6 Q Okay. In 2011, when you got your 7 promotion to assistant general counsel, from that 8 period for the next two years, you were the 9 primary person responsible for responding to the 10 UBS's discovery requests in that litigation, 11 correct?</p> <p>12 A I don't think that's how I would phrase 13 it, no.</p> <p>14 Q Well, who was primarily responsible for 15 responding to UBS's discovery requests in the UBS 16 litigation in or about 2011 through 2013?</p> <p>17 A I don't know that you can identify a 18 single person that would have been responsible for 19 responding to discovery.</p> <p>20 Q There was no person at HCM who took 21 responsibility ultimately for ensuring that 22 document requests were properly responded to; 23 that's what you're saying?</p> <p>24 A That's not my testimony.</p> <p>25 Q Who, to the best of your knowledge, was</p>	<p>75</p> <p>1 A You can. Just to be clear, there were -- 2 before you said Highland and you meant just 3 Highland Capital Management, LP. There were lots 4 of other entities involved.</p> <p>5 Q Right. So if we call it the UBS New York 6 litigation against Highland and its affiliates, 7 you'll know what I'm referring to, correct?</p> <p>8 A Yes.</p> <p>9 Q And you were primarily responsible for 10 supervising that litigation from 2011 through at 11 least the bankruptcy?</p> <p>12 A That's not correct.</p> <p>13 Q Okay. When were you the primary person 14 responsible for supervising that litigation, 15 during what time frame?</p> <p>16 A I'm trying to remember exactly when I 17 relinquished day-to-day management, but for a 18 substantial period of time several years. That 19 was done by Jason Vancour.</p> <p>20 Q And that was during what period of time?</p> <p>21 A I'm struggling to remember. It would have 22 been somewhere in 2012 to '15 or so.</p> <p>23 Q And then you resumed day-to-day 24 supervision after that?</p> <p>25 A I don't remember if we handed it off to</p>

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1 one other person or if I took it straight back		1 Q By whom?	
2 over.		2 A By Mr. Ellington.	
3 Q But you came to resume your role as the		3 Q Did you ever directly inform Mr. Dondero	
4 day-to-day supervisor of that litigation prior to		4 about the trial or the litigation?	
5 it going to trial, correct?		5 A I don't remember if I did or not. I don't	
6 A Correct.		6 recall.	
7 Q And you were the day-to-day supervisor of		7 Q How do you know Mr. Ellington did that?	
8 that litigation during the trial, correct?		8 A I only have a very general recollection	
9 A Yes.		9 that he indicated that Mr. Dondero had been kept	
10 Q And that was a trial that ultimately		10 apprised.	
11 resulted in a roughly \$1 billion judgment against		11 Q He indicated that to you?	
12 two of the defendants in that case, correct?		12 A Correct.	
13 A Correct.		13 Q And after the trial, did you communicate,	
14 Q And you, during that trial, came every		14 in words or substance, that it was likely that UBS	
15 single day to court and actively directed the		15 would get a significant judgment?	
16 outside counsel who were the courtroom advocates		16 A I don't remember how I communicated --	
17 for the defendants in that case, correct?		17 what I communicated at that point.	
18 MS. SMITH: Objection to form.		18 Q Did you have any recommendation as to	
19 A I mean, I don't know that I directed them,		19 whether or not UBS would likely obtain a judgment	
20 but we were part of a team together that was		20 after sitting through the trial?	
21 working cooperatively for the clients.		21 A I don't recall if I did one way or	
22 BY MR. CLUBOK:		22 another.	
23 Q Well, did they take your direction during		23 Q Did you have a belief at the time as to	
24 the trial?		24 whether UBS would likely get a judgment based on	
25 A They took my direction sometimes and I		25 what you saw at the trial?	
	78		80
1 took theirs sometimes.		1 A I mean, it was -- it was pretty complex,	
2 Q Did you report daily during that trial to		2 so there were a variety of different possible	
3 Scott Ellington?		3 outcomes that I was considering.	
4 A I don't recall if I did or not.		4 Q Yeah, but you saw it coming, that there	
5 Q Did you regularly report to Scott		5 would likely be a significant judgment given what	
6 Ellington throughout the course of that trial?		6 went on at the trial; is that fair?	
7 A I believe that's fair to say, yes.		7 MS. SMITH: Objection to form.	
8 Q Did you regularly report to anyone else		8 A Actually not necessarily, no.	
9 other than Scott Ellington about the -- how the		9 BY MR. CLUBOK:	
10 trial was going?		10 Q It's true that you spoke with	
11 A I don't believe so, no.		11 Mr. Ellington at some point where Mr. Ellington	
12 Q And were you also responsible for		12 acknowledged it was likely to be a significant	
13 supervising the post-trial proceedings, the		13 judgment based on what happened at the trial;	
14 briefing and other communications with the Court		14 isn't that true?	
15 in between the end of the trial and prior to the		15 MS. SMITH: Objection to form. My	
16 decision by the Court?		16 understanding, there's two parts to the trial. I	
17 A I don't remember what the post-trial		17 just want to make sure what we're talking about.	
18 briefing was or not. I don't remember what the		18 BY MR. CLUBOK:	
19 post-trial briefing was.		19 Q Isn't it true that you had discussions	
20 Q Was there anyone else at Highland who was		20 with Mr. Ellington at some point where, in words	
21 responsible from the in-house perspective of		21 or substance, you discussed the likelihood that	
22 dealing with the litigation proceedings in between		22 the outcome of the first phase of the trial would	
23 trial and judgment other than yourself?		23 be a significant judgment in UBS's favor?	
24 A Mr. Ellington would have had some role and		24 A So just to be clear, we're talking about	
25 then Mr. Dondero would have been kept informed.		25 the Phase 1 trial that took place against SOHC and	

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1 CDO Fund, correct?		1 litigation?	
2 Q Correct.		2 A At various points in time I was asked to	
3 A I don't remember if I did tell him that or		3 assist in preparation kind of settlement-related	
4 not. I mean, we spoke about kind of all of the		4 materials, but the actual decision-making was	
5 legal permutations of how the Court might rule.		5 never mine.	
6 Q Right. But in words or substance, during		6 Q Whose was it?	
7 that discussion, whether you told him or he told		7 A Ultimately, it would have been	
8 you, you discussed the likelihood that UBS was		8 Mr. Dondero's.	
9 going to get a meaningful judgment against		9 Q Did you ever provide any advice regarding	
10 CDO Fund and SOHC as a result of that Phase 1		10 the wisdom of settling the case?	
11 trial, correct?		11 A I don't recall if I did or not.	
12 A I don't recall. I mean, we certainly		12 Q Did you ever provide any advice regarding	
13 discussed it as a possibility, but in terms of how		13 the merits of the case?	
14 we weighed likelihoods, I just don't remember.		14 A I'm certain I did that, yes.	
15 Q The trial did not go well for the		15 Q Who did you provide that advice to?	
16 defendants, correct?		16 A It would really depend on the time period.	
17 MS. SMITH: Objection, form.		17 Q You said part of the job you always did	
18 A The outcome did not go as the defendants		18 at -- strike that.	
19 had hoped. I actually thought that our trial		19 As part of the job that you did over the	
20 counsel performed fairly well.		20 years at Highland was due diligence on litigation,	
21 BY MR. CLUBOK:		21 correct?	
22 Q Fair enough. I'm not asking you how your		22 A That doesn't accurately reflect my	
23 trial counsel performed. But in terms of the		23 testimony.	
24 facts that were revealed at trial that led to the		24 Q Shorthanding it, but part of the job you	
25 judge's decision, those were facts that were not		25 did, for example, for SAS was due diligence on	
	82		84
1 favorable generally to the positions --		1 litigation they were considering funding?	
2 MS. SMITH: Objection to form.		2 A Well, I knew SAS was affiliated with	
3 BY MR. CLUBOK:		3 Mr. Dondero somehow. I didn't -- well, let me	
4 Q -- that the defendants had been taking,		4 rephrase it. I knew Mr. Dondero was involved in	
5 correct?		5 SAS and had approved its operations in some way.	
6 A I'll let the court judgment speak for		6 I didn't know how he was related to it. And so	
7 itself.		7 from my seat at Highland, I analyzed cases that	
8 Q Did you play any role ever in analyzing		8 SAS could potentially provide litigation funding	
9 whether or not Highland and its affiliates should		9 for.	
10 settle with UBS?		10 Q Right. And when you say analyzed, you	
11 MS. SMITH: Objection to form.		11 would be asked to review the matter and give your	
12 A I never -- I never analyzed whether they		12 opinion about the relative merits of the case?	
13 should settle, no.		13 A Yes.	
14 BY MR. CLUBOK:		14 Q And did you consider yourself to be good	
15 Q Okay. You never analyzed whether or not		15 at that job of analyzing a case and giving an	
16 Highland -- if I say the Highland defendants, is		16 opinion as to the merits?	
17 that sufficient acceptable shorthand for all the		17 A I mean, we all hope we're pretty good at	
18 defendants in the case?		18 our jobs, don't we?	
19 A Yes.		19 Q We all hope. Did you consider yourself to	
20 Q And all the defendants in the case were		20 be good at that job?	
21 either Highland or Highland affiliates, correct?		21 A I did it to the best of my ability. I	
22 A That's correct.		22 think I'm pretty good at my job generally.	
23 Q Okay. So did you ever perform any		23 Q And specifically were you good at	
24 analysis as to whether or not the Highland		24 analyzing the merits of litigation -- are you	
25 defendants should settle with UBS in the New York		25 okay?	

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1	A Yeah.	1	A No, I believe it probably was
2	Q Do you need a break?	2	Mr. Ellington and Mr. Dondero.
3	A No.	3	Q Directly to Mr. Dondero?
4	Q Are you sure?	4	A Probably, but I can't say for certain.
5	A Yeah.	5	Q Would that have been oral or written?
6	MR. CLUBOK: Let's go off the record.	6	A I don't know.
7	A No, we're not. Let's keep going.	7	Q When did you first make that
8	MR. CLUBOK: Let's go off the record.	8	recommendation?
9	THE VIDEOGRAPHER: We are off the record	9	A I don't know. It was a very lengthy
10	10 at 11:39 a.m.	10	litigation.
11	(Recess taken from 11:39 a.m. CDT to	11	Q Did you ever make that recommendation
12	11:47 a.m. CDT)	12	12 prior to trial?
13	THE VIDEOGRAPHER: The time is 11:47 a.m.	13	A I don't recall if I did or not.
14	We are back on the record.	14	Q Well, you were going to trial on a billion
15	BY MR. CLUBOK:	15	dollar -- yeah, strike that.
16	Q Sir, did you believe that you were good at	16	You were going to trial on a roughly
17	analyzing the merits of litigation?	17	17 billion dollar claim including interest. Prior to
18	A Yes.	18	18 stepping into the courtroom for that Phase 1
19	Q And did you ever -- were you ever asked to	19	19 trial, had you made a recommendation that
20	analyze the merits of the UBS New York litigation	20	20 liability was likely?
21	against the Highland and its affiliates?	21	A Immediately prior to stepping into trial?
22	A Yes.	22	Q At any time prior to going to Phase 1
23	Q And did you ever give a recommendation, in	23	23 trial, did you recommend to Mr. Ellington and
24	words or substance, that UBS was likely to	24	24 Mr. Dondero that liability was likely to be
25	prevail, at least in part in that litigation?	25	25 established against SOHC and CDO Fund by UBS?
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1	A I don't recall my exact recommendations,	1	A My testimony was that I believed that I
2	but I probably did.	2	probably stated to Mr. Ellington and Mr. Dondero
3	Q And --	3	that SOHC and CDO Fund were likely to be found
4	A At least on some of the claims, but not on	4	liable on breach of contract.
5	others.	5	Q And that was before the trial?
6	Q Which claims?	6	A Right. But I don't know when exactly.
7	A I don't recall. There were a lot of them.	7	Q Okay.
8	Q Do you recall if you gave a recommendation	8	A Some time period which was -- I mean, that
9	9 that UBS was likely to prevail in Phase 1 against	9	covers like nine years.
10	10 SOHC and CDO Fund for the claims that were tried?	10	Q Right. But at some point summary judgment
11	A Well, it's hard to say the answer because	11	11 was decided largely in UBS's favor, correct?
12	12 prevailing had a lot of different meanings in that	12	A With respect to those two funds, the
13	13 context.	13	13 answer is yes. With respect to the other
14	14 Q Let's start with liability and then we'll	14	14 entities, not necessarily.
15	15 talk about damages. Did you ever give a	15	Q Okay. But with respect to those two
16	16 recommendation that UBS was likely to win on its	16	16 funds, UBS prevailed in the summary judgment
17	17 breach of contract claims against CDO Fund and	17	17 briefing?
18	18 SOHC in Phase 1?	18	MS. SMITH: Objection to form.
19	A Yes, I did.	19	A I know it was prepared to go to trial. It
20	Q And what was that recommendation?	20	20 was -- there were claims going to trial. In terms
21	A That liability was likely to be found.	21	21 of what the orders say, I'll let them speak for
22	Q Who did you make that to?	22	22 themselves.
23	A I don't recall. It certainly would have	23	BY MR. CLUBOK:
24	24 been -- well, I don't recall who it was.	24	Q At any time after the summary judgment
25	Q You said it certainly would have been?	25	25 decision but before trial started, did you make a

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1 recommendation to Mr. Ellington and Mr. Dondero 2 that liability was likely to be established 3 against SOHC and CDO Fund?		1 CDO Fund and SOHC for the breach of contract 2 claims that UBS had in the New York litigation, 3 correct?	
4 A I really don't recall.		4 MS. SMITH: Objection to form.	
5 Q As you sit here today, you have no idea if 6 any time after summary judgment was decided 7 against SOHC and CDO Fund but before the case for 8 roughly a billion dollars was to be tried, whether 9 you made a recommendation as to your view of the 10 merits of liability?		5 A That's probably fair, yes.	
11 A I'm not saying that I didn't. I'm just saying, sitting here today, I don't remember.		6 BY MR. CLUBOK:	
12 Q Did you -- what was the reaction of 13 Mr. Ellington when you made the recommendation 14 prior to going to trial, that liability was likely 15 to be established against SOHC and CDO Fund?		7 Q And how long after coming to that belief 8 did it take for you to make that recommendation 9 known to Mr. Ellington and Mr. Dondero? Is that 10 something you kept to yourself for a long time or 11 did you fairly soon thereafter share that opinion 12 with Mr. Ellington and Mr. Dondero?	
17 A Well, again, when we're talking about prior to trial, you're talking about that		13 A So it's difficult for me to answer the question because at the time I was a very junior attorney. No one was really asking me for my opinion about anything. I was responsible for kind of the day-to-day grind of working on the case.	
19 nine-year time period from 2009 to 2018?		19 Q Okay. At what point did people start 20 asking you about your opinion on the merits of the 21 case?	
20 Q In that question I was.		22 A I can't pinpoint exactly, but it would have been probably after I had been at Highland three or four years.	
21 A Okay. We discussed the UBS case numerous times.		25 Q So sometime in the 2011 or 2012 time	
23 Q Hold on. There was a whole nine-year 24 period. From the get-go did you make a 25 recommendation that liability was likely to be			
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1 established against SOHC and CDO Fund?		1 frame?	
2 A What do you mean from the get-go?		2 A Maybe around then, maybe a little later than that.	
3 Q From the beginning of the litigation?		4 Q Well, was it before -- you said at some 5 point this other individual took over the 6 day-to-day management of the case. Remember that?	
4 A I wasn't employed at Highland from the beginning of the litigation.		7 A Correct.	
6 Q You started working on the matter in 7 roughly 2011, correct?		8 Q And prior to that, had you shared your 9 views that you had already reached from early on, 10 that SOHC and CDO Fund were likely to have 11 liability established against them for the breach 12 of contract claims that UBS had brought?	
8 A That's not accurate, no.		13 A I think I probably -- I don't exactly recall, but I believe I probably discussed it with Mr. Ellington.	
9 Q When did you start working on the matter?		16 Q What about Mr. Dondero?	
10 A Earlier than that. When I arrived in Highland in two thousand -- late September, October 2009 I started working on it.		17 A At that time I don't -- I don't remember one way or another if I would have spoken to him.	
13 Q Okay. So from the time that you started 14 work on litigation, what's the earliest time that 15 you can recall, roughly, in which you came to the 16 belief that liability would be established against 17 CDO Fund and SOHC?		19 I was still pretty junior and so I didn't regularly converse with him.	
18 A I don't recall. It would have been early on, but I don't know exactly when.		21 Q Okay. But then you resumed day-to-day 22 management of the matter approximately when?	
20 Q Like as early as 2010?		23 A Whenever Mr. -- well, that's what I said.	
21 A I don't remember.		24 I don't recall because Mr. Vancouver left and then I don't remember if another person took over the	
22 Q Okay. But your -- when you say early on, 23 you mean roughly within the first year of working 24 on the matter, you came to the belief that 25 liability was likely to be established against			

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<p>1 case afterwards and then I took over after that 2 person left, or if I took over directly from 3 Mr. Vancour. 4 Q Who was that person you're thinking of? 5 A Jason Goldsmith. 6 Q Certainly by the time Jason Goldsmith and 7 Mr. Vancour had left, you had resumed day-to-day 8 management for the UBS New York litigation against 9 Highland, correct?</p> <p>10 A Well, those were different time periods. 11 Mr. Vancour left first, Mr. Goldsmith left second. 12 So after Mr. Goldsmith's departure, I certainly 13 know -- well, after Mr. Goldsmith's departure 14 would have been when I believe I probably would 15 have picked up management.</p> <p>16 Q And that would have been before summary 17 judgment briefing?</p> <p>18 A Probably. I mean, the -- I don't know. 19 Q And at that point, at some point you -- 20 did you -- at some point you came to share your 21 views with Mr. Dondero about the likelihood that 22 liability would be established against SOHC and 23 CDO Fund for its contract claims, correct?</p> <p>24 A At some point I did discuss that with him, 25 I believe.</p>	<p>1 that liability was likely to be determined against 2 CDO Fund and SOHC? 3 A I don't recall. 4 Q Roughly? 5 A It would have been more than one and 6 probably less than five. 7 Q Okay. And did Mr. Dondero push back? 8 A I don't remember what he said on that. 9 There were so many moving parts in that case, I 10 don't know that I -- it's difficult to isolate 11 those very specific claims against those very 12 specific defendants as part of the conversation. 13 Q Right. But the breach of contract was 14 certainly a core part of the case, right? 15 A Yes, but there were numerous what you 16 would call core parts of the case. 17 Q Okay. But I want to focus on the breach 18 of contract against SOHC and CDO Fund, who were 19 also referred to often as the counterparties to 20 the UBS restructured warehouse agreement. 21 A That's fair, they were. 22 Q Okay. And those liability claims against 23 the counterparties, with respect to those, did 24 Mr. Dondero ever push back, in words or substance, 25 about the likelihood of liability being</p>
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<p>1 Q Roughly when was that? 2 A I don't know, sir. 3 Q Certainly years ago, right? 4 A Yes, it was a long time ago. 5 Q And it was before you started working on 6 settlement options in connection with the matter, 7 correct? 8 MS. SMITH: Objection to form. 9 A Can you clarify the question, please?</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q I don't know -- remember the exact words 12 you used, but you said at some point you had some 13 involvement with -- contributed to some settlement 14 analysis related to the case. I'm not trying to 15 put words in your mouth. I'm paraphrasing. 16 A That's fair. I did contribute to a 17 settlement analysis on the case. 18 Q Before contributing to that settlement 19 analysis, fair to say you had already conveyed 20 your views directly to Mr. Dondero that liability 21 was likely to be found in UBS's favor against SOHC 22 and CDO Fund? 23 A I just don't remember, sir. 24 Q How many times did you have discussions 25 with Mr. Dondero in which you expressed your view</p>	<p>1 established? 2 A Yes, he did. 3 Q And what did he say? 4 A I don't remember the specific words, but I 5 definitely remember he pushed back. 6 Q And ultimately did he convey whether or 7 not he accepted your recommendation? 8 A Well, the case never settled. The case 9 never settled, so I don't know what to say about 10 that. 11 Q Yeah, but did he ever -- at the end, did 12 you come away with the impression that he accepted 13 that liability against those two entities with 14 respect to the breach of contract claims was more 15 likely than not? 16 A I don't know that he ever accepted that, 17 no. 18 Q Did Mr. Ellington? 19 A I don't know if he did or not. 20 Q Did you ever weigh in -- so we've talked 21 about liability with respect to these claims. Did 22 you ever come to an opinion about likely damages 23 that would be awarded if liability were 24 established? 25 A I have a variety of opinions, but I don't</p>

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<p>1 think there was one in particular that I had as 2 the most likely outcome.</p> <p>3 Q What were the -- how many likely -- did 4 you have no view, like there's three or four 5 outcomes and each were equally likely or were 6 there two outcomes that were equally likely or you 7 just had -- you couldn't -- even with your ability 8 to analyze litigation, had no idea what was going 9 to happen with damages?</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 A My recollection actually was that there 12 were nine separate independent scenarios.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Nine?</p> <p>15 A Yes.</p> <p>16 Q And were these laid out in a document?</p> <p>17 A Yes.</p> <p>18 Q And who did you present these to?</p> <p>19 A Mr. Ellington.</p> <p>20 Q And Mr Dondero?</p> <p>21 A I don't remember if I showed it to 22 Mr. Dondero or not.</p> <p>23 Q When did you prepare that?</p> <p>24 A It would have been -- it incorporated the 25 expert reports, so it would have been subsequent</p>		<p>1 A I'm familiar with that, yes.</p> <p>2 Q And you're certainly familiar with the 3 process of looking at different scenarios and 4 coming up with an expected range of outcomes in 5 terms --</p> <p>6 A Yes.</p> <p>7 Q Did you ever, in words or substance, come 8 up with an expected likely range of outcomes for 9 damages in connection with the breach of contract 10 claims?</p> <p>11 A I don't think I did, no.</p> <p>12 Q And did you ever, in words or substance, 13 convey anything about your views on the relative 14 likelihood of one scenario versus another in terms 15 of damages?</p> <p>16 A I just generally -- I may have, but I 17 don't recall having done so.</p> <p>18 Q And did you ever, in words or substance, 19 have a belief that likely it would be damages in 20 the hundreds of millions of range or more?</p> <p>21 A Those were certainly possible scenarios, 22 but I don't recall doing a probability analysis as 23 to whether they were the most likely scenarios.</p> <p>24 Q Yeah, but whether or not you did a formal 25 probability analysis, fair to say that you and</p>		
<p>1 to the expert reports and prior to trial, but 2 where exactly, I don't know. But the document's 3 on the debtor's system, which you can check the 4 metadata.</p> <p>5 Q What was it called?</p> <p>6 A It was an Excel spreadsheet. I don't 7 remember what it was called.</p> <p>8 Q And do you remember -- was it the kind of 9 thing that you -- did you assign percentage 10 likelihood to each of the nine scenarios?</p> <p>11 A I don't believe I did on that sheet, no.</p> <p>12 Q Did you ever?</p> <p>13 A I don't believe -- well, I don't recall if 14 I did or not just because there were, I don't 15 know, maybe 12 different line items that went into 16 damages and then it depended on about six or seven 17 different rulings of the Court as to which one 18 would be incorporated or not. And so it's 19 difficult to really come up with -- to say how I 20 was thinking about it at the time because you're 21 looking at -- I mean, it's literally an Excel 22 matrix that was more than a screen full.</p> <p>23 Q Right. But you're aware of -- you're 24 familiar with Monte Carlo simulations in terms of 25 the context of analyzing litigation outcomes?</p>	98		<p>1 Mr. Ellington at various times discussed the 2 general likelihood that the damages in the case 3 were likely to be in excess of \$100 million?</p> <p>4 A We certainly discussed it as a 5 possibility. I don't know that we agreed that it 6 was a probability.</p> <p>7 Q Well, Mr. Ellington conveyed to you, in 8 words or substance, that he believed it was more 9 likely than not that ultimately damages in excess 10 of \$100 million would be awarded in UBS's favor 11 with respect to the breach of contract claims 12 against SOHC and CDO Fund, correct?</p> <p>13 A He may have. I don't recall if he did or 14 not.</p> <p>15 Q And did you ever convey, in words or 16 substance, to anyone, that you believed it was 17 more likely than not that the damages that would 18 be awarded in UBS's favor with respect to the 19 breach of contract claims against SOHC and 20 CDO Fund would likely be in excess of \$100 21 million?</p> <p>22 A I very well might have, but I don't recall 23 having done so.</p> <p>24 Q You certainly believed that prior to the 25 trial, correct?</p>	100

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<p>1 A I don't think that's fair to say, no. I 2 thought we actually had really good arguments on 3 the synthetic warehouse.</p> <p>4 Q Okay. So you believe -- so you said you 5 were good at your job, but you believed it was 6 more likely than not that the ultimate damages 7 would be less than \$100 million total?</p> <p>8 A I didn't say that, Counselor. Your 9 question was whether or not I believed in the 10 arguments we were making and I did, which would 11 have knocked damages well below 100 million.</p> <p>12 Q No, I never asked you about the -- whether 13 you believed in the arguments. That was a concept 14 you introduced. I'm looking at the transcript. 15 Let me ask the question again.</p> <p>16 Taking into account the argument you're 17 making and the argument UBS was making and your 18 ability to analyze litigation, take all of that 19 and the work you did on the case, everything that 20 you had done, fair to say that at some point prior 21 to trial, you came to the belief that it was more 22 likely than not that damages in excess of 23 \$100 million would be awarded in UBS's favor with 24 respect to the breach of contract claims against 25 CDO Fund and SOHC?</p>		<p>1 including but not limited to the synthetic 2 warehouse agreement argument, which would have 3 dropped damages below \$100 million.</p> <p>4 Q That's not true, is it? Even if you had 5 won the synthetic warehouse agreement, the total 6 damages still would have been in excess of 7 100 million, unless you won some other theories; 8 isn't that true?</p> <p>9 MS. SMITH: Objection to form.</p> <p>10 A That may be your testimony, sir.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Well, the damages on the nonsynthetic 13 warehouse that were claimed in the case were well 14 in excess of \$100 million, correct?</p> <p>15 A I'm sorry, Mr. Clubok. I'm not in a 16 position to debate the merits of the case that we 17 tried together. I'm just recalling the 18 arguments -- that we had arguments that would 19 knock it down below 100 million. And among those 20 arguments were the synthetic warehouse agreement 21 arguments.</p> <p>22 Q Okay. I didn't ask you to debate the 23 merits. Again, you're -- please don't introduce 24 concepts that I didn't ask. My simple question is 25 the damages that were claimed on the cash</p>	
<p>1 A I don't recall having had that thought.</p> <p>2 Q So prior to trial was it your belief that 3 it was more likely than not that the total 4 damages -- well, strike that.</p> <p>5 You've said that you believed that 6 liability would be established. That you agree 7 prior to trial you believed was more likely than 8 not based on the work you had done, correct?</p> <p>9 A To be specific, I believed that liability 10 was more likely than not to be proven against 11 CDO Fund and SOHC on the breach of contract 12 claims.</p> <p>13 Q Right. And --</p> <p>14 A Which were the ones tried in Phase 1.</p> <p>15 Q Right. And what was tried in Phase 1 was 16 the liability and the damages with respect to 17 those claims, correct?</p> <p>18 A Yes.</p> <p>19 Q Okay. So prior to trial was it your 20 belief that it was more likely than not that 21 despite liability being likely, the total damages 22 would be less than \$100 million?</p> <p>23 A I just don't recall which way -- what my 24 risk analysis was at the time, but I do remember 25 having a great deal of faith in certain arguments,</p>	102	<p>1 warehouse were well in excess of \$100 million; 2 isn't that true?</p> <p>3 A Yes, assuming that UBS won all of its 4 arguments on the cash warehouse and lost on the 5 synthetic, I think that -- my recollection is it 6 may have been above 100 million. I honestly don't 7 remember.</p> <p>8 Q Okay. And again, you -- as you sit here 9 today, your testimony is even though you remember 10 believing and giving the advice on liability, you 11 don't remember if you had any belief as to whether 12 it was more likely than not that total damages 13 would be above or below \$100 million prior to the 14 Phase 1 trial?</p> <p>15 A That's correct, because the damages issue 16 was fundamentally a series of math problems that 17 were determined by experts, and so I don't know 18 that I necessarily had a conclusion about those.</p> <p>19 Q You don't know if you did or you don't 20 remember if you did?</p> <p>21 A I just don't remember if I did.</p> <p>22 Q Okay. Were you ever asked by anyone to 23 run that analysis or to give your opinion on what 24 the likely damages would be, given your belief 25 that liability was likely to be established?</p>	104

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1 A I would have to speculate if I did or not.		1 A I don't know that that was necessarily the basis.	
2 Q I'm not asking you to speculate. Do you		2 Q What was?	
3 remember ever being asked by anyone to give your		4 A It was a big case with big claims and	
4 opinion on what the likely damages would be, given		5 going to trial inevitably has risks and it's	
5 your stated opinion to Mr. Ellington and		6 better to limit those risks to some sort of	
6 Mr. Dondero that likely -- liability was likely to		7 negotiated amount than to roll the dice at trial.	
7 be established?		8 Q And you didn't take into account, when you	
8 A I just don't recall.		9 gave that recommendation, your views on liability,	
9 Q Well, did anyone give an opinion on		10 you set those aside in making that settlement	
10 damages that you were aware of?		11 recommendation?	
11 A On a probability weighted basis, I don't		12 MS. SMITH: Objection to form.	
12 remember if they did, no.		13 A I'm certain that was a factor I	
13 Q Did any of your outside -- were any of		14 considered, but your point -- your question, I	
14 your outside counsel ever asked to give their		15 believe, was something slightly different.	
15 opinion as to whether or not damages -- strike		16 BY MR. CLUBOK:	
16 that.		17 Q Okay. But certainly one of the factors	
17 Were any of your outside counsel ever		18 that led you to repeatedly recommend settlement	
18 asked to give their opinion as to what the likely		19 was your belief that liability was likely to be	
19 damages would be in connection with the breach of		20 established, at least with respect to the contract	
20 contract claims against CDO Fund and SOHC?		21 claims against SOHC and CDO Fund, correct?	
21 MS. SMITH: Objection to form.		22 A I don't remember if that was an essential	
22 A I don't remember if they were or not.		23 motivating factor in my recommendation or not.	
23 BY MR. CLUBOK:		24 Q Okay. So you, as you sit here today,	
24 Q Do you remember them ever giving any such		25 don't know if your belief in liability played any	
25 opinion, whether they were asked to or not?	106		108
1 MS. SMITH: Objection to form.		1 role in recommending the case should be settled?	
2 A I don't. It's been a long time,		2 A That's not my testimony.	
3 Mr. Clubok. I don't recall.		3 Q My question -- that was your testimony,	
4 BY MR. CLUBOK:		4 actually. That was like literally exactly your	
5 Q Did you ever, in words or substance, give		5 testimony. You said I don't remember if it was an	
6 any recommendation in terms of whether the case		6 essential motivating factor. Okay. Was it any	
7 should be settled or a particular amount it should		7 factor in your recommendation? Did it factor into	
8 be settled for?		8 your recommendation in some way your views on	
9 A I think I made recommendations that it		9 liability?	
10 should be settled, but I don't know that I made		10 A Yes.	
11 any recommendations as to the amounts.		11 Q Okay. But you don't know if it was an	
12 Q Who did you recommend the case should be		12 essential factor on your views of settlement,	
13 settled to?		13 correct?	
14 A Mr. Ellington.		14 A That's correct.	
15 Q Anybody else?		15 Q Do you think, as a general matter, the	
16 A I believe that would have been it.		16 likelihood of legal liability being established	
17 Q How many times roughly did you tell		17 should be an essential factor in determining	
18 Mr. Ellington this case should be settled?		18 whether to settle a matter?	
19 A I don't recall. It would have been a		19 A If you're asking for a general comment,	
20 number of times at various different points over		20 decontextualized from the actual facts of the UBS	
21 various years.		21 case, yes, but I don't think that general	
22 Q And that's because of your continued view		22 statement applies to the UBS case.	
23 from early on that liability was likely to be		23 Q As a lawyer advising a company who comes	
24 established at least against SOHC and CDO Funds		24 to the belief that liability is likely to be	
25 for the breach of contract claims, correct?		25 established, don't you think you have a	

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1 responsibility to say, in words or substance, 2 because we have liability here or likely have 3 liability here, we should meet our legal 4 obligations, at least through settlement, if we 5 can?		1 Q Okay. Mr. Dondero was the sole director 2 of SOHC at the time, correct? 3 A I think that's right, yes. 4 Q So -- did you ever -- did you think it 5 was -- so Mr. Dondero controlled SOHC during the 6 pendency of the litigation, at least until he was 7 displaced in the bankruptcy, correct? 8 A You can -- you can add -- I'm not going to 9 adopt the word control. He was a director of -- 10 he was the sole director of SOHC. That's a fact.	
6 MS. SMITH: Objection to form. 7 A I'm sorry, Counselor. I'm not going to 8 sit here and come up with how I would render legal 9 advice generally. 10 BY MR. CLUBOK: 11 Q Well, when you say that you believe that 12 liability would likely be established, fair to say 13 that you believed that SOHC and CDO Fund had 14 contractual obligations that had been breached to 15 UBS, correct?		11 Q Okay. And did you believe it was your 12 responsibility to ever advise Mr. Dondero that he 13 should cause SOHC to live up to the contractual 14 obligations you came to believe that they had owed 15 UBS? 16 A That would be a business decision and 17 Mr. Dondero could make it if he wanted to. 18 Q Did you believe it was your responsibility 19 to ever advise Mr. Dondero that he should live up 20 to the contractual obligations you believed that 21 SOHC owed to UBS? 22 MS. SMITH: Objection to form. 23 A Again, my only advice, sir, was that I 24 believed liability was more likely than not to be 25 found. I didn't talk about obligations and	
16 A I believe they would be found in breach of 17 contract. 18 Q Okay. Do you believe that it's 19 appropriate for a lawyer to advise their client to 20 abide by the terms of its contract? 21 MS. SMITH: Objection to form. 22 A As a general proposition -- I'm sorry. 23 I'm not going to be able to give general 24 testimony. If you'd like to ask me about a 25 specific situation, I'm happy to address that.			
1 BY MR. CLUBOK: 2 Q Well, do you believe that it was 3 appropriate for you to advise those responsible 4 for SOHC and CDO Fund that they had contractual 5 obligations that they were in breach of? 6 A Did I believe I was obligated to inform -- 7 I mean, we had -- I had discussed, as I said, 8 liability and probability of liability on those 9 specific claims of those specific defendants with 10 both Mr. Ellington and Mr. Dondero at various 11 points in time. 12 Q Did you ever, in words or substance, 13 advise those responsible for managing SOHC and CDO 14 Fund's affairs that they should abide by the 15 contractual obligations you came to believe they 16 owed? 17 MS. SMITH: Objection to form. 18 A I'm going to disagree with the premise of 19 your question, sir. 20 BY MR. CLUBOK: 21 Q What's the premise you disagree with? 22 A I don't know that there necessarily was 23 anyone generally responsible for the -- those two 24 entities, save potentially Mr. Dondero at the top 25 of the organization.	110	1 expectations and that he needed to do anything. 2 My legal advice was solely with respect to the 3 probability of outcome on those two claims. 4 BY MR. CLUBOK: 5 Q Is that a no to my question? 6 A Your question assumes statements I did not 7 make. 8 Q No, it doesn't assume anything. I'm going 9 to ask it again and I'm going to ask you to listen 10 carefully to my question. 11 A Okay. 12 Q Did you believe it was your responsibility 13 to ever advise Mr. Dondero that he should live up 14 to the contractual obligations that SOHC owed to 15 UBS? 16 A I disagree with the premise of the 17 question. 18 Q What premise do you disagree with? 19 A That there are contractual obligations 20 that SOHC and CDO Fund necessarily owed to UBS. 21 Q You believed it was more likely than not 22 that a court would determine that they had 23 contractual obligations that they owed to UBS that 24 they were in breach of, correct? 25 A Yes.	112

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1 Q Okay. Did you ever believe it was your 2 responsibility to advise Mr. Dondero that he 3 should cause SOHC to live up to those contractual 4 obligations?		1 Q Your testimony here under oath is that you 2 don't remember anything at all about a role you 3 played in connection with any settlement analysis 4 of the UBS litigation in New York against Highland 5 and its affiliates?	
5 A Again, my responsibility was to do the 6 legal analysis, not to tell people how to run 7 their business.		6 A That was not my testimony.	
8 Q So that's a no to my question?		7 Q Okay. What do you remember, with as much 8 specificity as possible, about the role you played 9 in connection with any settlement analysis of the 10 New York UBS litigation against Highland and its 11 affiliates?	
9 A Well, no, I disagreed with the underlying 10 premise of your question and that was my response, 11 sir.		12 A I know that Highland considered settlement 13 at numerous time periods and it would have been my 14 role to kind of gather the underlying documents 15 and facts to support settlement proposals.	
12 Q My question is, did you ever believe it 13 was your responsibility to advise Mr. Dondero that 14 he should cause SOHC to live up to the contractual 15 obligations you came to believe a court would 16 determine that SOHC and CDO Fund owed to UBS that 17 they were in breach of?		16 Q Okay. Any other role that you ever 17 remember playing in connection with any settlement 18 analysis of the New York UBS litigation against 19 Highland and its affiliates other than gathering 20 documents and facts to support settlement 21 proposals?	
18 A Right. And my testimony was that I 19 disagreed with the premise of that question.		22 A I don't recall.	
20 Q No, I changed the question. Okay. So now 21 I changed the question to address your premise 22 issue and you agreed with all these premises. 23 I've got it in writing here, so I'm going to ask 24 the question one more time and ask you to listen 25 to this question.		23 Q Did you continue to play any role in 24 connection with the settlement analysis after the 25 bankruptcy?	
	114		116
1 Did you ever believe it was your 2 responsibility to advise Mr. Dondero that he 3 should cause SOHC and CDO Fund to live up to the 4 contractual obligations you had come to believe a 5 court would determine they owed to UBS?		1 A I believe -- as -- let me see how I can 2 say this properly. I believe the answer is no. I 3 may have had some ancillary or occasional touch on 4 that process, but largely the answer is no.	
6 A Well, it was first that a court was more 7 likely than not to determine. No, I don't believe 8 it was my obligation to tell him to fulfill 9 contractual obligations or cause those entities to 10 fulfill contractual obligations.		5 Q You were aware that there were settlement 6 discussions, including court-ordered mediation, in 7 connection with UBS's claims in the bankruptcy, 8 correct?	
11 Q Was there anyone at Highland that you're 12 aware of who you understood to have that role to 13 advise Mr. Dondero to fulfill contractual 14 obligations?		9 A Yes.	
15 MS. SMITH: Objection to form.		10 Q And you're aware that those settlement 11 discussions at times also included potential 12 settlement of the remaining claims in the New York 13 litigation against the entities that are outside 14 the bankruptcy, like CDO Fund and SOHC?	
16 A Since it's -- no, I don't know that I 17 would have had a thought process about that one 18 way or another.		15 A Actually, no, that was -- I don't recall 16 that ever being disclosed to me.	
19 BY MR. CLUBOK:		17 Q Do you recall there ever being any 18 discussion, in words or substance, that there was 19 potential settlement regarding UBS in its claims 20 against Multi Strat?	
20 Q So let's talk about the role you did play 21 in connection with settlement analysis for the UBS 22 New York litigation. Can you describe, in as much 23 detail as possible, what your role was, if any?		21 A And when we say settlement, we're talking 22 about like a cash payment for Multi Strat to UBS 23 in exchange for a release? Or are we talking 24 about like the May 2020 settlement, partial 25 settlement, whatever you want to call that thing?	
24 A I don't specifically remember what role I 25 played in settlement analysis.			

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<p>1 Q Right. We're talking about -- there was a 2 May 2020 agreement regarding the sale of certain 3 assets and how the proceeds would be preserved. I 4 want to take that out of the equation.</p> <p>5 A Okay.</p> <p>6 Q So we're talking about payments or 7 consideration by Multi Strat to UBS with respect 8 to the claims that were pending in the New York 9 litigation.</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 A No, I -- so I had had an accident in early 12 January of 2020. By the time I got back from 13 leave of absence in April or May, largely I had 14 just kind of become a task attorney at that point 15 and Pachulski was running things.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Were you ever tasked by Pachulski after 18 April -- after -- strike that.</p> <p>19 When did you come back after your 20 accident, roughly?</p> <p>21 A It was a slow return. I came back 22 part-time in April, and I think I was fully back 23 in May.</p> <p>24 Q Okay. After returning to your active 25 employment following your accident in April or May</p>	<p>117</p> <p>1 but it was a large number.</p> <p>2 Q And so you reviewed and gave comments 3 throughout the process of objecting to the UBS 4 claims?</p> <p>5 A Yes.</p> <p>6 Q And were there any other tasks that you 7 were given ever in connection with the UBS claim 8 by Mr. Seery or by the Pachulski firm?</p> <p>9 A Not really, no.</p> <p>10 Q Not really, or no?</p> <p>11 A Sit -- I'm -- I would say -- yeah, I would 12 say no. I worked on the claim objection as my 13 role with respect to UBS.</p> <p>14 Q How about on the summary judgment?</p> <p>15 A I call that part of the claim objection 16 because it's part of the same process.</p> <p>17 Q Okay.</p> <p>18 A So also there was a lift stay motion. I 19 was involved in that. So really it -- let me 20 rephrase it. I was involved in what I'm going to 21 call the litigating part. So the adversarial 22 pleadings between the debtor and UBS with respect 23 to how the Court should rule on the claim.</p> <p>24 Q And you were responsible for all of that 25 up until the time the parties reached a</p>	
<p>1 of 2020, were you ever tasked with any work in 2 connection with the UBS claim?</p> <p>3 A Yes.</p> <p>4 Q What were you tasked with?</p> <p>5 A I was tasked with assisting Pachulski in 6 analysis and drafting of the claim objection.</p> <p>7 Q Who tasked you with that?</p> <p>8 A Mr. Seery.</p> <p>9 Q Directly?</p> <p>10 A Yes.</p> <p>11 Q He told you that he needed assistance in 12 analyzing UBS's claim and helping draft the claim 13 objection, correct?</p> <p>14 A He told me to assist Pachulski in that 15 process.</p> <p>16 Q I see. And who specifically at Pachulski 17 did you assist in that process?</p> <p>18 A It was a team of lawyers, but primarily 19 led by Mr. Feinstein.</p> <p>20 Q Anyone else?</p> <p>21 A His entire team. Elissa Wagner, I believe 22 was an associate, John Morris had some involvement 23 at various points in time, Greg Demo had 24 involvement at certain points in time. I don't 25 remember who the other lawyers were at Pachulski,</p>	<p>118</p> <p>1 settlement?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 A I didn't say I was responsible, no.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q I'm sorry. You had tasks assigned to you 6 in connection with the litigation between UBS and 7 the debtor up until the time that those entities 8 reached a settlement agreement?</p> <p>9 A No, that's not accurate.</p> <p>10 Q Okay. When did you -- when was the last 11 time you were assigned a task in connection with 12 the UBS litigation against the debtor?</p> <p>13 A Probably would have been responding to 14 certain discovery that UBS propounded in advance 15 of summary judgment.</p> <p>16 Q That was the last time you were given any 17 kind of task, that you can recall?</p> <p>18 A The last time I can recall, yes. Largely, 19 Pachulski took it over and if they asked me to do 20 something, I would, but I was mostly kept out of 21 that process.</p> <p>22 Q And who asked you to help respond to 23 discovery requests that UBS had propounded in 24 advance of summary judgment?</p> <p>25 A I believe it was Greg Demo.</p>	<p>120</p>

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1 Q And did you provide complete assistance to 2 Mr. Demo in responding to the UBS discovery 3 request to the best of your ability? 4 A I provided assistance to Mr. Demo in 5 response to the tasks that he had given me, yes. 6 Q Did you believe that you were providing 7 complete assistance to Mr. Demo in responding to 8 the UBS discovery requests to the best of your 9 ability? 10 MS. SMITH: Objection to form. 11 A So I disagree with the premise of your 12 question because I was given specific tasks and I 13 did those specific tasks. 14 BY MR. CLUBOK: 15 Q Do you believe that in connection with the 16 tasks that Mr. Demo assigned you, you performed 17 those tasks to the very best of your ability? 18 A Yes. 19 Q And do you believe that you were totally 20 candid with Mr. Demo in the course of performing 21 those tasks that you were assigned with respect to 22 the discovery requests for UBS? 23 MS. SMITH: Objection to form. 24 A With respect to those tasks, yes. 25		1 Q You never affirmatively made misstatements 2 to him as far as you can recall, correct? 4 A As far as I can recall, I never made a 5 misstatement to Mr. Demo. 6 Q And same thing with respect to all of the 7 lawyers at the Pachulski firm? 8 MS. SMITH: Objection to form. 9 A To the best of my recollection, I never 10 made an affirmative misstatement to any of them. 11 BY MR. CLUBOK: 12 Q Did you ever make an affirmative 13 misstatement to any of the independent directors? 14 A None that I can recall. 15 Q But you certainly -- there's certainly 16 information that you did not volunteer in 17 connection with your work with them; is that fair? 18 MS. SMITH: Objection to form. 19 A I don't believe that's how I would 20 characterize it, sir, no. 21 BY MR. CLUBOK: 22 Q Well, there's information that you had 23 that may have been relevant to the tasks you were 24 performing that you chose not to volunteer. Fair? 25 MS. SMITH: Objection to form.	
	122		124
1 BY MR. CLUBOK: 2 Q Were there any tasks that you were not 3 completely candid with Mr. Demo about? 4 MS. SMITH: Objection to form. 5 A No. I'm being very specific. With 6 respect to the tasks that I had with respect to 7 the discovery in UBS, I believe I was candid with 8 Mr. Demo. 9 BY MR. CLUBOK: 10 Q Was there ever a time you were less than 11 candid with Mr. Demo? 12 MS. SMITH: Objection to form. 13 A In response to a question that he had or 14 just generally volunteering lots of information to 15 him? 16 BY MR. CLUBOK: 17 Q Well, let's start with -- 18 A I don't -- I'm sorry, I don't understand 19 the question, sir. 20 Q You don't understand the question as to 21 whether or not you were ever less than candid with 22 Mr. Demo? 23 MS. SMITH: Objection to form. 24 A Did I ever not tell him the truth? No, I 25 didn't ever not tell him the truth.	1 A Relevant to the tasks I was performing? 2 No, I don't know that that's necessarily true. 3 BY MR. CLUBOK: 4 Q Relevant to the UBS litigation with 5 Highland. Strike that. 6 MS. SMITH: Objection, form. 7 BY MR. CLUBOK: 8 Q Let me ask this question again. There was 9 certainly information that you had that was 10 relevant to the UBS litigation with the debtor 11 that you chose not to volunteer, correct? 12 A No. 13 MS. SMITH: Objection to form. 14 A Actually, I don't think that's right at 15 all. No, I don't believe that's correct. 16 BY MR. CLUBOK: 17 Q You were specifically asked to identify 18 information about the assets of CDO Fund and SOHC, 19 correct? 20 A That wasn't the exact task, no. 21 Q At some point you were made aware that UBS 22 was seeking information about the assets of 23 CDO Fund and SOHC, correct? 24 A Yes. 25 Q And you were aware that UBS was seeking		

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1 information not just about the current -- or the 2 then current assets of those entities, but the 3 historical information about those entities going 4 back to the beginning of 2009?		1 tasks? 2 A I don't believe -- in terms of what he -- 3 of what we were supposed to be gathering for them, 4 no, I don't believe he did.	
5 A I was aware that UBS sought that 6 information, yes.		5 Q Okay. So did you convey to Mr. Ellington, 6 in words or substance, that one of the important 7 things that UBS -- well, strike that. 8 Did Mr. Demo make it clear to you that one 9 of the very important things that -- strike that. 10 Did Mr. Demo make it clear to you that UBS 11 had conveyed that it put a high level of 12 importance behind the request for identifying the 13 assets of SOHC and CDO Fund?	
7 Q And you were aware that the Pachulski firm 8 believed they had an obligation -- or strike that. 9 Did the debtor or its lawyers ever make it 10 clear to you that they intended to provide that 11 information to the very best of their ability?		14 MS. SMITH: Objection to form. 15 A That wasn't exactly the task I was given. 16 I'm struggling to recall exactly what we said UBS 17 wanted, but that ultimately was not -- the task I 18 was given was something more specific.	
12 A So we had fairly detailed conversations 13 about what we were going to do in response to that 14 discovery. I don't know that there was ever a 15 discussion of -- well, I remember we had fairly -- 16 we had pretty detailed conversations about how to 17 try to figure out how to respond to that 18 discovery.		19 BY MR. CLUBOK: 20 Q What was that? 21 A To link up the assets that were in the 22 funds in May of 2009 and answer the question what 23 happened to those assets and where are they today.	
19 Q Who's the we in that sentence?		24 Q And you believed that the only task you 25 had in connection with identification of assets	
20 A It was me and Mr. Demo.			
21 Q That's it?			
22 A John Morris may have been involved, but I 23 believe it was primarily Mr. Demo.			
24 Q Anybody else?			
25 A No one else that I can recall sitting here	126		128
1 today.		1 was to answer that very specific question? 2 A It was -- in terms of past assets? That's 3 probably right. That was the defined task.	
2 Q And did you convey this discussion to 3 anyone, like, for example, someone in the team, to 4 assist you with this work or to Mr. Ellington, to 5 apprise him of it or Mr. Dondero? Did you ever 6 after having that discussion with Mr. Demo or 7 those extensive discussions, ever convey, in words 8 or substance, those discussions to anybody?		4 Q Okay. And in terms of current assets, 5 were you also asked, in words or substance, to 6 help identify the full breadth of the current 7 assets held by CDO Fund and SOHC?	
9 A I conveyed to Mr. Ellington the tasks that 10 I had been assigned and what I was doing to 11 fulfill those tasks.		8 A I don't remember if I was or not. I would 9 have to look at the -- I don't remember.	
12 Q Anyone else?		10 Q You understood that UBS was trying to 11 obtain information about the current assets of 12 CDO Fund and SOHC, correct?	
13 MS. SMITH: Objection to form.		13 A Yes.	
14 A Stephanie Vitiello assisted in gathering 15 some of the documents, although I don't remember 16 if it was in response to UBS or not. There were a 17 lot of document requests at the time.		14 Q And also HFP?	
18 BY MR. CLUBOK:		15 A Yes.	
19 Q Is there anyone else that you can recall 20 conveying the substance of the extensive 21 conversations you had with Mr. Demo about 22 responding to the UBS requests?		16 Q Okay. And did you provide all material 17 information relating to the assets held by 18 CDO Fund, SOHC and HFP from March of 2009 through 19 the present?	
23 A No.		20 MS. SMITH: Objection to form.	
24 Q And did Mr. Ellington give you any 25 instructions in any way about how to perform those		21 A I don't know. We provided a lot of 22 documents, so the documents will speak for 23 themselves.	
		24 BY MR. CLUBOK:	
		25 Q Did you endeavor to provide all material	

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<p>1 information that you were aware of relating to the 2 assets held by CDO Fund, SOHC and HFP from March 3 of 2009 through the present in response to the 4 detailed discussions you had with Mr. Demo?</p> <p>5 A No. There were certain documents that 6 were separately held, like e-mails, and so we 7 didn't touch the e-mails.</p> <p>8 Q What do you mean?</p> <p>9 A So there was a motion to compel by the UCC 10 in July of 2020. And so all of the e-mail 11 communications were at that point separated out 12 and sent to Meta-e for contract review. And so 13 that e-mail process was part of a very long 14 conversation -- a long series of conversations and 15 process with Sidley. And so once those e-mails 16 went over to Meta-e, I didn't really address them. 17 They were a separate data set that were being 18 handled separately.</p> <p>19 Q Did you make it clear to Mr. Demo that you 20 were -- that you did not consider any review of 21 those e-mails to be part of your --</p> <p>22 A Absolutely.</p> <p>23 Q Okay. And did Mr. Demo say that other 24 people would deal with that, those e-mails and the 25 information, if any, that was relevant to the</p>	<p>129</p> <p>1 looking for documents for HFP.</p> <p>2 Q Why did you do that?</p> <p>3 A Because the process of figuring out what 4 had happened to the CDO Fund and SOHC assets had 5 been a lengthy task, and I told Mr. Demo that 6 unless I got positive instructions from them to 7 the contrary, that I didn't want to have to repeat 8 that task for HFP and he agreed with that.</p> <p>9 Q Is that because you-all agreed that -- is 10 that because you said -- sorry. You guys decided 11 you just didn't want to do it or you thought it 12 was unnecessary because you had already gathered 13 information in the course of looking for SOHC's 14 assets?</p> <p>15 A I don't remember what -- I don't remember 16 if the basis was that we'll just stand on our 17 objections or if it's not necessary for UBS's 18 motion for summary judgment. Because the 19 fundamental point was UBS was asking for -- 20 Pachulski and I agreed that UBS was asking for 21 documents it didn't need, but the reason it was 22 asking for documents it didn't need was for the 23 purposes of preventing the Court from going 24 forward with the summary judgment on the claims 25 against the debtor. And so there was a discussion</p>
<p>1 asset information that UBS was seeking?</p> <p>2 A I don't recall if he did or not. I 3 remember John Morris was the person at Pachulski 4 responsible for that part of the process and what 5 conversations happened between Mr. Demo and 6 Mr. Morris, I don't know.</p> <p>7 Q Well, did anyone convey to you, in words 8 or substance, that other people would be handling, 9 reviewing those e-mails that were being housed by 10 Meta-e for responsiveness to the information about 11 the assets of SOHC, CDO Fund and HFP that UBS was 12 requesting?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 A The conversation simply was, all right, 15 the e-mails are separate, Isaac, you don't need to 16 look at those or worry about those, they're being 17 handled separately.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q But other than those e-mails, you were 20 responsible for getting any other material 21 information you had about the assets of CDO Fund, 22 SOHC and HFP dating back to March 2009?</p> <p>23 A So there's one exception to that.</p> <p>24 Q Yes.</p> <p>25 A I told Mr. Demo that I was not going to be</p>	<p>130</p> <p>1 of what are the documents we need to give them, 2 how hard is it to get, and then what are we -- 3 between, you know, kind of the balance of the 4 burden and the requests and, you know, how much 5 you want to show the Court that you've produced 6 these documents, even though they're completely 7 irrelevant to the claims at bar. I mean, that's a 8 balancing test that counsel goes through all the 9 time.</p> <p>10 Q You told Mr. Demo that the total value of 11 assets at SOHC and HFP from the time period of 12 March 2009 through the present was totally 13 irrelevant to our claims against the debtor?</p> <p>14 MS. SMITH: Objection to form.</p> <p>15 A I don't know that that was the 16 conversation. The conclusion was that we weren't 17 going to look for the HFP documents.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q Okay. You introduced this concept of 20 total irrelevancy. Did you, in words or 21 substance, discuss with Mr. Demo that asset 22 information about CDO Fund, SOHC and HFP was 23 totally irrelevant against the claims of the 24 debtor?</p> <p>25 MS. SMITH: Objection to form.</p>

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1 A I believe the conversation was UBS -- UBS 2 has had ten years to seek whatever discovery it 3 wants and it didn't need these documents until a 4 month before summary judgment. And so the 5 discussion was that that request for documents 6 immediately before summary judgment was an attempt 7 to delay summary judgment.		1 A Ultimately that was not the task that he 2 concluded I should undertake. 3 Q That's not my -- we'll get to the task 4 that he gave you. But did he convey, in words or 5 substance, that the debtor was going to use its 6 best efforts to identify the assets of SOHC and 7 CDO Fund from March 2009 to the present for 8 purposes of providing that information to UBS? 9 MS. SMITH: Objection to form.	
8 BY MR. CLUBOK: 9 Q Yeah, the question -- I asked the question 10 about relevancy. Regardless of whether -- 11 whatever your views are, these arguments you want 12 to make about --		10 A At some point in the process, that may 11 have been his statement, but that wasn't the 12 conclusion after we had gone through numerous 13 discussions.	
13 A To be clear, these aren't my arguments, 14 sir. This is Pachulski's position they were 15 conveying to me. 16 Q I see. So Pachulski conveyed -- did they 17 convey to you, then, that it was unnecessary to 18 obtain all of the asset information from HFP from 19 March 2009 to the present, in words or substance?		14 BY MR. CLUBOK: 15 Q What was the conclusion? 16 A The conclusion was that my task was to 17 locate the assets that were in the production to 18 UBS as of May 2009 and identify what had happened 19 to those assets.	
20 A There was a conclusion that we weren't 21 going to. I don't remember if there was a 22 discussion, the use of the word necessary or not, 23 but ultimately we didn't decide to. 24 Q So Pachulski -- Mr. Demo specifically 25 conveyed to you that they had concluded it was		20 Q And did you have -- setting aside the 21 e-mails that you were specifically told others 22 would be reviewing, did you have any other 23 information about assets of SOHC or CDO Fund from 24 March 2009 to the present that you did not share 25 with Mr. Demo?	
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1 unnecessary to try to trace the assets of HFP from 2 March 2009 to the present? 3 A Again, you're introducing the word 4 necessary, which I'm not prepared to adopt. I can 5 just say the conclusion from Mr. Demo was that we 6 weren't going to do that at that time. 7 Q Okay. Mr. Demo conveyed to you that the 8 debtor had concluded it was not going to try to 9 identify the assets of HFP from March 2009 to the 10 present to provide to UBS, correct? 11 A Can you repeat that question? It had a 12 lot in it. 13 Q Did Mr. Demo convey to you that the debtor 14 had concluded it was not going to try to identify 15 the assets of HFP from March 2009 to the present 16 in order to provide that information to UBS? 17 A I think that's probably a fair 18 characterization. 19 Q Okay. Well, we may come back to HFP. But 20 with respect to SOHC and CDO Fund, did Mr. Demo 21 convey, in words or substance, that it was 22 necessary to as best as possible identify the 23 assets of SOHC and CDO Fund from March 2009 to the 24 present for purposes of providing that information 25 to UBS?		1 A From March 2009 through the present, yes, 2 I did have some other information I did not share 3 with him. 4 Q And that was material information about 5 the value of assets of those two funds between 6 March 2009 through the present, correct? 7 MS. SMITH: Objection to form. 8 A Material information about the value of 9 assets? I don't really think that's right, no. 10 BY MR. CLUBOK: 11 Q Well, you said you had other -- well, 12 material should be assumed. If you had 13 information that an asset was named Highland CDO 14 Opportunity Fund, LLP versus LP, I'm not talking 15 about that. I'm talking about material 16 information. So let me ask the question again. 17 I said -- you said from March 2009 to the 18 present, you had some other information about the 19 assets of SOHC or CDO Fund that you did not share 20 with Mr. Demo, correct? 21 A Yes. 22 Q And when you say some information, do you 23 mean material information about those assets? 24 A Material information over that entire time 25 period, probably, yes.	

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1 Q But was --		1 BY MR. CLUBOK:	
2 A Hold on. Apologies, sir, let me finish		2 Q Did you make a conscious decision not to	
3 the answer. Material information about that		3 share that information with the Pachulski firm?	
4 entire time period, yes. Material information		4 MS. SMITH: Objection to form.	
5 about the task I was assigned, no.		5 A I made a conscious decision that it wasn't	
6 Q Understood. And what was the material		6 relevant to the task I was undertaking.	
7 information you had about the assets of SOHC and		7 BY MR. CLUBOK:	
8 CDO Fund from the period March 2009 through the		8 Q Did you ever share that information with	
9 present that you chose not to share with		9 Mr. Seery?	
10 Pachulski?		10 A No, but we rarely spoke.	
11 MS. SMITH: Objection to form.		11 Q Did you share that information or cause it	
12 A So I'm going to put the word material to		12 to be shared with any of the directors?	
13 the side, sir. So if you want to just re-ask the		13 A I almost never spoke to the other two	
14 question, because that's a judgment call and I'll		14 directors, or even directly ever communicated with	
15 let the Court make that decision.		15 them hardly ever.	
16 BY MR. CLUBOK:		16 Q Did you communicate through any means,	
17 Q You're a lawyer.		17 e-mail, smoke signals, text messages, whatever,	
18 A I am.		18 the information about the 2017 transaction	
19 Q So I'm using -- with your lawyer hat on,		19 involving CDO Fund and SOHC assets to any	
20 did you believe you had any material information		20 independent director or lawyer of the debtor?	
21 about the assets of SOHC and CDO Fund from the		21 A No. It wasn't relevant to the task I was	
22 period March 2009 through the present that you		22 working on.	
23 chose not to share with Pachulski?		23 Q Did you discuss that transaction with	
24 MS. SMITH: Objection to form.		24 anybody else at any point during the pendency of	
25 A I'm not going to perform -- sir, I'm not		25 the bankruptcy?	
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1 prepared to perform legal analysis on the fly, but		1 MS. SMITH: Objection to form.	
2 if you'd like to ask me for objective facts, I'm		2 A Yes.	
3 happy to provide those to you.		3 BY MR. CLUBOK:	
4 BY MR. CLUBOK:		4 Q Who did you discuss it with?	
5 Q We'll come back to that. But what was the		5 A Beecher Carlson.	
6 information you had about the assets of SOHC and		6 Q Who is Beecher Carlson?	
7 CDO Fund from March 2009 to the present that you		7 A They're the underwriter for Sentinel on	
8 chose not to provide to the Pachulski firm?		8 the insurance policy.	
9 MS. SMITH: Objection to form.		9 Q And there's an insurance policy?	
10 A I knew that there had been a transaction		10 A Yes.	
11 in 2017 sometime with respect to an		11 Q And who is that insurance -- who is the	
12 after-the-event insurance policy with Sentinel.		12 insured on that insurance policy?	
13 BY MR. CLUBOK:		13 A Certain of the defendants in the UBS case.	
14 Q Anything else?		14 Q Including CDO Fund and SOHC?	
15 A Is there anything else? There may have		15 A I believe that's probably right, but I'd	
16 been other things, but I just didn't look into		16 have to have my recollection refreshed.	
17 them really.		17 Q And you understood that insurance policy	
18 Q And you made a conscious decision not to		18 is an asset of the CDO Fund and SOHC, correct?	
19 share anything about the transaction in 2017		19 A No.	
20 involving Sentinel insurance with the Pachulski		20 Q What do you think it is?	
21 firm, correct?		21 A I don't know how to -- it's however	
22 MS. SMITH: Objection to form.		22 accountants would classify it, but, no, I don't	
23 A It wasn't relevant to the task I was		23 believe it's an asset. The accountants didn't	
24 undertaking.		24 classify it as an asset was my understanding. I	
25		25 don't think insurance policies show up on balance	
	137		139
1 Q But was --		1 BY MR. CLUBOK:	
2 A Hold on. Apologies, sir, let me finish		2 Q Did you make a conscious decision not to	
3 the answer. Material information about that		3 share that information with the Pachulski firm?	
4 entire time period, yes. Material information		4 MS. SMITH: Objection to form.	
5 about the task I was assigned, no.		5 A I made a conscious decision that it wasn't	
6 Q Understood. And what was the material		6 relevant to the task I was undertaking.	
7 information you had about the assets of SOHC and		7 BY MR. CLUBOK:	
8 CDO Fund from the period March 2009 through the		8 Q Did you ever share that information with	
9 present that you chose not to share with		9 Mr. Seery?	
10 Pachulski?		10 A No, but we rarely spoke.	
11 MS. SMITH: Objection to form.		11 Q Did you share that information or cause it	
12 A So I'm going to put the word material to		12 to be shared with any of the directors?	
13 the side, sir. So if you want to just re-ask the		13 A I almost never spoke to the other two	
14 question, because that's a judgment call and I'll		14 directors, or even directly ever communicated with	
15 let the Court make that decision.		15 them hardly ever.	
16 BY MR. CLUBOK:		16 Q Did you communicate through any means,	
17 Q You're a lawyer.		17 e-mail, smoke signals, text messages, whatever,	
18 A I am.		18 the information about the 2017 transaction	
19 Q So I'm using -- with your lawyer hat on,		19 involving CDO Fund and SOHC assets to any	
20 did you believe you had any material information		20 independent director or lawyer of the debtor?	
21 about the assets of SOHC and CDO Fund from the		21 A No. It wasn't relevant to the task I was	
22 period March 2009 through the present that you		22 working on.	
23 chose not to share with Pachulski?		23 Q Did you discuss that transaction with	
24 MS. SMITH: Objection to form.		24 anybody else at any point during the pendency of	
25 A I'm not going to perform -- sir, I'm not		25 the bankruptcy?	
	138		140
1 prepared to perform legal analysis on the fly, but		1 MS. SMITH: Objection to form.	
2 if you'd like to ask me for objective facts, I'm		2 A Yes.	
3 happy to provide those to you.		3 BY MR. CLUBOK:	
4 BY MR. CLUBOK:		4 Q Who did you discuss it with?	
5 Q We'll come back to that. But what was the		5 A Beecher Carlson.	
6 information you had about the assets of SOHC and		6 Q Who is Beecher Carlson?	
7 CDO Fund from March 2009 to the present that you		7 A They're the underwriter for Sentinel on	
8 chose not to provide to the Pachulski firm?		8 the insurance policy.	
9 MS. SMITH: Objection to form.		9 Q And there's an insurance policy?	
10 A I knew that there had been a transaction		10 A Yes.	
11 in 2017 sometime with respect to an		11 Q And who is that insurance -- who is the	
12 after-the-event insurance policy with Sentinel.		12 insured on that insurance policy?	
13 BY MR. CLUBOK:		13 A Certain of the defendants in the UBS case.	
14 Q Anything else?		14 Q Including CDO Fund and SOHC?	
15 A Is there anything else? There may have		15 A I believe that's probably right, but I'd	
16 been other things, but I just didn't look into		16 have to have my recollection refreshed.	
17 them really.		17 Q And you understood that insurance policy	
18 Q And you made a conscious decision not to		18 is an asset of the CDO Fund and SOHC, correct?	
19 share anything about the transaction in 2017		19 A No.	
20 involving Sentinel insurance with the Pachulski		20 Q What do you think it is?	
21 firm, correct?		21 A I don't know how to -- it's however	
22 MS. SMITH: Objection to form.		22 accountants would classify it, but, no, I don't	
23 A It wasn't relevant to the task I was		23 believe it's an asset. The accountants didn't	
24 undertaking.		24 classify it as an asset was my understanding. I	
25		25 don't think insurance policies show up on balance	

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<p>1 sheets.</p> <p>2 Q There were assets exchanged for that</p> <p>3 insurance policy in 2017, correct?</p> <p>4 A That's my understanding, yes.</p> <p>5 Q What was the rough value of those assets</p> <p>6 that were exchanged?</p> <p>7 A I don't know.</p> <p>8 Q You have no idea?</p> <p>9 A No.</p> <p>10 Q Did you ever know?</p> <p>11 A No, I don't believe I did.</p> <p>12 Q You never had any idea about the rough</p> <p>13 total value of the assets exchanged in 2017 for</p> <p>14 the insurance policy that you've called the ATE</p> <p>15 policy from Sentinel?</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 A No, I wasn't really involved in that.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q You weren't involved in what?</p> <p>20 A The drafting of the policy or the process</p> <p>21 of getting it implemented.</p> <p>22 Q You weren't involved at all in the</p> <p>23 drafting of the policy?</p> <p>24 A No.</p> <p>25 Q You weren't involved at all in the process</p>	<p>1 judgment came down, you shared that with Beecher</p> <p>2 Carlson?</p> <p>3 MS. SMITH: Objection to form.</p> <p>4 A I shared it with them. I don't remember</p> <p>5 if it was immediately because you have to remember</p> <p>6 at this time I was in recovery at home. So I</p> <p>7 think I provided it to them kind of as quickly as</p> <p>8 possible, given my limitations at the time.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Why did you provide it to Beecher Carlson</p> <p>11 as quickly as possible?</p> <p>12 A Because it's a -- the judgment against the</p> <p>13 insureds would be a fact that you should inform</p> <p>14 the underwriter.</p> <p>15 Q When you say Beecher Carlson is the</p> <p>16 underwriter, what do you mean? They underwrote</p> <p>17 the policy?</p> <p>18 A No, sorry, that's the wrong term. Oh,</p> <p>19 man. I forgot their exact role. They're -- maybe</p> <p>20 they're more like an auditor.</p> <p>21 Q For Sentinel?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 A Well, that's the thing. For the policy.</p> <p>24 My understanding is that you had to have kind of</p> <p>25 an external third party looking at the policy, but</p>
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<p>1 of getting the insurance policy implemented; is</p> <p>2 that correct?</p> <p>3 A I had one role and it was a limited one.</p> <p>4 Q What was that?</p> <p>5 A It was to share information with Beecher</p> <p>6 Carlson as the underwriter about the underlying</p> <p>7 litigation.</p> <p>8 Q And that was the only role you ever had</p> <p>9 that in any way was connected to the insurance</p> <p>10 policy issued by Sentinel?</p> <p>11 A That's the only one I can ever recall,</p> <p>12 yes.</p> <p>13 Q And what information did you share with</p> <p>14 Beecher Carlson as the underwriter, about the</p> <p>15 underlying litigation?</p> <p>16 A Pleadings --</p> <p>17 Q Anything else?</p> <p>18 A -- for the most part. The appellate</p> <p>19 rulings of the New York appellate division.</p> <p>20 Q Anything else?</p> <p>21 A When the February 2020 judgment came down,</p> <p>22 I believe I shared that with them.</p> <p>23 Q So as soon as the judgment came down</p> <p>24 regarding -- strike that.</p> <p>25 As soon as the roughly billion dollar</p>	<p>1 I don't remember exactly. There's the right word</p> <p>2 for what their role was and I apologize. It's</p> <p>3 just slipping my mind right now.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q Okay. And other than providing</p> <p>6 information -- and by the way, is the first time</p> <p>7 you provided information to Beecher Carlson after</p> <p>8 the policy was put into place?</p> <p>9 A No.</p> <p>10 Q So you started providing information to</p> <p>11 Beecher Carlson prior to the execution of the</p> <p>12 policy?</p> <p>13 A My recollection is that I had one</p> <p>14 conversation with Beecher Carlson in advance of</p> <p>15 the execution of the policy.</p> <p>16 Q Who at Beecher Carlson?</p> <p>17 A I don't know.</p> <p>18 Q And what was the substance of that one</p> <p>19 conversation?</p> <p>20 A To essentially give the entire background</p> <p>21 of the litigation.</p> <p>22 Q At that point did you give your opinion</p> <p>23 that liability was likely to be established</p> <p>24 against CDO Fund and SOHC, in words or substance?</p> <p>25 A I -- it was one conversation about</p>

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<p>1 45 minutes four years ago. I really don't 2 remember what we said.</p> <p>3 Q Do you recall ever providing, in advance 4 of the policy, your opinion that liability was 5 likely to be established?</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 A I don't recall.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Do you recall ever telling Beecher Carlson 10 before or after the policy but prior to the 11 judgment, that you had formed an opinion that 12 liability was likely to be established against 13 CDO Fund and SOHC with respect to the breach of 14 contract claims?</p> <p>15 A I don't recall. Largely it was providing 16 Beecher Carlson with information and letting them 17 make their determination.</p> <p>18 Q Did you ever provide them with that 19 information, the view you had with respect to 20 liability?</p> <p>21 A I don't recall if I did. Mostly I 22 provided them objective data, like pleadings, 23 orders of the Court, those sorts of materials.</p> <p>24 Q Are you saying you have no idea if you 25 provided this information or are you saying you</p>	<p>145</p> <p>1 Q You called it an after-the-event policy. 2 Was it also sometimes shorthanded by ATE policy?</p> <p>3 A Yes, that's what after the event stands 4 for. It's a fairly standard industry product 5 that's very common, particularly in the UK and 6 other common law jurisdictions. So it's a fairly 7 matured industry.</p> <p>8 Q Okay. And did you have any role -- or 9 sorry, who made the decision to obtain an ATE 10 policy with respect to the UBS litigation in 11 New York?</p> <p>12 A My understanding is that Mr. Dondero made 13 that decision.</p> <p>14 Q What's that understanding based on?</p> <p>15 A I believe that was communicated to me by 16 Mr. Ellington.</p> <p>17 Q When?</p> <p>18 A Back around the time, probably right after 19 the policy was implemented.</p> <p>20 Q Okay. So after it was implemented was the 21 first time you heard that Mr. Dondero had made the 22 decision to implement the ATE policy?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 MR. CLUBOK: Sorry, what's the form 25 objection?</p>
<p>1 don't recall doing it and therefore you probably 2 didn't do it?</p> <p>3 A Well, I'm saying neither. What I'm saying 4 is I don't remember one way or another.</p> <p>5 Q Okay. And other than providing 6 information to Beecher Carlson, did you have any 7 other role in any way with the insurance policy 8 issued by Sentinel with respect to the UBS 9 litigation?</p> <p>10 A No, not that I recall.</p> <p>11 Q Did you have any role at all in the 12 process by which it was decided to pursue 13 obtaining this policy?</p> <p>14 MS. SMITH: Objection to form.</p> <p>15 A I don't believe that I was involved in 16 that process really.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Who made the decision -- by the way, you 19 called it an after-the-event policy?</p> <p>20 A Yeah. Sorry. I need to sneeze, but I'll 21 try to push through it.</p> <p>22 Q Okay. You let us know if you need a 23 break. As I've said many times, please tell us if 24 you need a break.</p> <p>25 A Just a sneeze on this one.</p>	<p>146</p> <p>1 MS. SMITH: I'm sorry, I just 2 misunderstood the question.</p> <p>3 MR. CLUBOK: Okay. I'll rephrase it.</p> <p>4 Sorry.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Are you saying that after the ATE 7 insurance policy went into effect was the first 8 time that you heard that Mr. Dondero had made the 9 decision to enter into that ATE policy?</p> <p>10 A I'm trying to recall, but I think that's 11 right.</p> <p>12 Q And do you know -- did anyone ever ask 13 your opinion as to whether or not it was a good 14 idea to do this?</p> <p>15 A I certainly don't recall -- let me 16 rephrase. I don't recall that ever happening. I 17 don't believe it did happen.</p> <p>18 Q Were you ever in any way involved with 19 weighing the pros and cons of entering into the 20 ATE policy prior to it being entered into?</p> <p>21 A In or around -- you know, for the policy 22 that got implemented, no.</p> <p>23 Q For any ATE policy?</p> <p>24 A I think there had been contemplation of an 25 ATE policy earlier in that year as a settlement</p>

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1 mechanism, but that's the only other thing I can		1 this policy to any of the independent directors?	
2 remember.		2 A I never discussed it with them one way or	
3 Q Were you involved in that?		3 another.	
4 A I believe it was part of a settlement		4 Q Did you ever disclose the existence of	
5 analysis that I contributed to. Or that I was		5 this policy to any lawyer representing the debtor?	
6 involved in.		6 A I never discussed it with them one way or	
7 Q And so as part of that settlement		7 another.	
8 analysis, you assessed the pros and cons of		8 Q Did you discuss this policy with any other	
9 entering into an ATE policy?		9 human being other than Beecher Carlson since the	
10 A I don't remember if I did or not. I		10 time that bankruptcy started?	
11 remember that term showed up during that time in		11 MS. SMITH: Objection to form.	
12 those considerations.		12 A Yes.	
13 Q But you're not linking that work you did		13 BY MR. CLUBOK:	
14 to the actual entering into the ATE policy?		14 Q Who?	
15 A No, they're two completely separate		15 A Matt DiOrio.	
16 processes.		16 Q When?	
17 Q Why?		17 A He was the one who usually would set up	
18 A Well, one was essentially a mechanism for		18 the calls with Beecher Carlson.	
19 funding a settlement which, you know, basically		19 Q And anyone else at all? Any other human	
20 in -- like essentially like you have a settlement		20 being that you discussed this policy with since	
21 agreement already done and signed and this is how		21 the bankruptcy?	
22 you're going to fund it.		22 A I had discussed it at one point with	
23 Q Okay.		23 Mr. Ellington.	
24 A That's not what the August 2017		24 Q When?	
25 transaction was.		25 A July sometime maybe.	
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1 Q What was the August 2017 transaction?		1 Q Of what year?	
2 A I'm not going to -- I don't know that I		2 A 2020. My apologies.	
3 have a good characterization for it. I wasn't		3 Q Anyone else at all?	
4 really involved in it, but it wasn't that.		4 A Not that I recall.	
5 Q What was it, as far as you know?		5 Q Okay.	
6 A It was a purchase of an after-the-event		6 MR. CLUBOK: Let's take a break.	
7 insurance policy.		7 THE VIDEOGRAPHER: We are off the record	
8 Q To do what?		8 at 1:04 p.m.	
9 A I don't know what the purpose was. I		9 (Recess taken from 1:04 p.m. CDT to	
10 wasn't really involved.		10 2:12 p.m. CDT)	
11 Q You have no idea what the purpose of the		11 THE VIDEOGRAPHER: The time is 2:12 p.m.	
12 after-the-event insurance policy was?		12 We are back on the record.	
13 A I don't know.		13 BY MR. CLUBOK:	
14 Q Did you ever see it?		14 Q Mr. Ellington [sic] --	
15 A I remember seeing one page of it one time.		15 A No.	
16 Q When was that?		16 Q Sorry. Mr. -- strike that.	
17 A We were doing one of our annual update		17 Mr. Leventon, you said you discussed the	
18 calls with Beecher Carlson and I think I asked		18 ATE policy with Mr. Ellington in approximately	
19 on -- can we -- can someone confirm for me who the		19 July 2020, correct?	
20 insureds are so I can make sure to link the		20 A I believe that was my testimony, yes.	
21 developments for the defendants to the insureds		21 Q What was the reason for that conversation?	
22 that are named, and so I saw one page of the		22 A We were discussing the discovery task that	
23 insurance policy at that point that listed who the		23 I had been placed on by -- or maybe it was August	
24 insureds were.		24 then. The discovery task that I had been placed	
25 Q Did you ever disclose the existence of		25 on by Pachulski and I was checking with	

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1 Mr. Ellington because he had been talking to 2 Mr. Seery a lot and I wanted to see if there was 3 anything I should be aware of. 4 Q And did you discuss with Mr. Ellington 5 whether or not you should disclose the ATE policy 6 as part of the task you were assigned? 7 A We discussed whether it was relevant to 8 the task that I had been assigned and 9 Mr. Ellington stated that he didn't believe that 10 it was relevant to the task I was working on. 11 Q You asked Mr. Ellington whether or not -- 12 in words or substance, you asked Mr. Ellington 13 whether you should disclose the policy to 14 Mr. Seery and the debtor's counsel? 15 MS. SMITH: Objection, form. 16 BY MR. CLUBOK: 17 Q Correct? 18 A That's not my testimony, no. 19 Q Isn't it true that, in words or substance, 20 you asked Mr. Ellington whether you should 21 disclose the policy to Mr. Seery and the debtor's 22 counsel? 23 MS. SMITH: Objection, form. 24 A That's not what our conversation was, no. 25		1 policy relevant to the task I was working on. But 2 I just hadn't been privy to those conversations so 3 I was checking. 4 Q Did you offer your view to Mr. Ellington 5 as to whether or not you should disclose the ATE 6 policy to Mr. Seery and debtor's counsel? 7 A I don't remember if I offered an opinion 8 to Mr. Ellington. I think it was more focused on 9 here's the task that I'm working on, is this 10 relevant to that task. 11 Q And he just said no, without any 12 explanation or did he give you an explanation for 13 his thinking? 14 A I don't remember -- I don't remember what 15 he said in that conversation. I remember the 16 conclusion, but I also had asked -- another part 17 of the conversation was, you've been talking to 18 Seery, I haven't, so do -- you know, is this 19 something I need to introduce or something that I 20 need to interject into the task I'm working on. 21 Q Why did you think it might be something 22 that would appropriately be interjected into the 23 task? 24 A Well, that wasn't my testimony. My 25 testimony is it was a thing to consider.	
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1 BY MR. CLUBOK: 2 Q Did you, in words or substance, ever ask 3 Mr. Ellington whether you should disclose the 4 policy? 5 A To whom? 6 Q To the debtor or their counsel. 7 A So the conversation was, is the policy 8 relevant to the task I'm working on, and the 9 answer, Mr. Ellington said he didn't believe that 10 it was and therefore didn't need to be included as 11 materials in part of that task. And then I asked, 12 you know, you've been in conversations with 13 Mr. Seery, I don't talk to Mr. Seery hardly ever, 14 so is there any other thing that -- any other -- 15 anything else that I should know or any other 16 reason, you know, outside of my task that I should 17 include it in the materials and Scott said no. 18 Q Who initiated this conversation? 19 A I don't recall. I take it back. I 20 probably initiated it, I think. 21 Q Why? 22 A Because I wanted to understand if there 23 had been kind of -- if there were separate 24 contexts and conversations with Mr. Seery that I 25 had not been privy to that would make the ATE		1 Q Did you think that it might be something 2 that would be appropriate to, as you say, 3 interject into the task? 4 A It would depend on the context. From the 5 face of the task, probably not; but if there was 6 further context based on Mr. Ellington's 7 conversations with Mr. Seery that I didn't have, 8 then I wanted to find out if that context existed. 9 Q You knew that it was an urgent request 10 from UBS to identify the total assets and history 11 of the assets in CDO Fund/SOHC, correct? 12 MS. SMITH: Objection, assumes facts not 13 in evidence. 14 A I don't know what you mean by urgent, sir. 15 BY MR. CLUBOK: 16 Q You were specifically advised that there 17 was an urgent request, or words to that effect, 18 from UBS for the debtor to identify the total 19 assets and history of the assets in CDO Fund and 20 SOHC; isn't that true? 21 MS. SMITH: Objection, form. 22 A I don't recall if the word urgent was 23 used. 24 BY MR. CLUBOK: 25 Q Whether the exact word urgent or high	

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1 priority or very important, was there any -- 2 anything like that that conveyed to you the 3 importance of this task? 4 A I believe it was conveyed to me that UBS 5 thought the task was very important, but I don't 6 know that that's necessarily what Pachulski's 7 position was. 8 Q Was it ever conveyed to you that it was a 9 high priority task for you to assist in 10 identifying all the assets and the history of the 11 assets for SOHC and CDO Fund? 12 A No. 13 MS. SMITH: Objection, form. 14 A Not that I recall. And it's certainly not 15 the task ultimately that I was given. 16 BY MR. CLUBOK: 17 Q Was it ever conveyed to you that the 18 debtor had a high priority task for itself to 19 identify the assets and history of the assets for 20 SOHC and CDO Fund? 21 A Not that I recall and that's certainly not 22 at the end of kind of the iterative discussion 23 process with Mr. Demo what I was tasked with 24 doing. 25 Q You said -- earlier, I was asking you	157	1 priority or very important, was there any -- 2 anything like that that conveyed to you the 3 importance of this task? 4 A That's correct. 5 Q Did you ever -- did you see a draft of the 6 ATE policy before it was executed? 7 A No, not that I recall. I don't -- no, I 8 don't believe I ever saw a draft. 9 Q Did you see an unsigned version of the ATE 10 policy? 11 A I don't believe I ever saw an unsigned 12 copy of the ATE policy. 13 Q Okay. So I'm trying to -- I'm going to 14 try to ask this as broadly as possible, and if you 15 don't understand the question, I'll repeat it. 16 But are you basically -- are you saying that other 17 than this one page that Mr. Sevilla showed you on 18 his computer screen, you never saw any part of the 19 ATE policy, whether it was executed or unexecuted, 20 correct? 21 A To the best of my recollection, that's 22 correct. 23 Q Did you ever try to see a copy of the ATE 24 policy in connection with your work at Highland? 25 A I never asked to see a copy of the ATE 26 policy that I recall. 27 Q When -- roughly when did Mr. Sevilla show 28 you this one page from the ATE policy?	159
1 about the ATE policy that was ultimately entered 2 into. Remember that discussion? 3 A Yes. 4 Q I think you said that you only saw one 5 page of it one time; is that right? 6 A That's right. 7 Q Who showed you that one page? 8 A JP Sevilla. 9 Q And how? 10 A On his computer screen. 11 Q Oh, he let you look at one page on his 12 computer screen and other than that, you never saw 13 the ATE policy as it was -- after it was actually 14 executed? 15 MS. SMITH: Objection to form. 16 A I don't know that -- 17 BY MR. CLUBOK: 18 Q Strike that. Let me ask the question 19 again. 20 Mr. Sevilla showed you one page from the 21 ATE policy on his computer screen, correct? 22 A Yes. 23 Q And other than that one page that 24 Mr. Sevilla showed you, you never saw the executed 25 ATE policy, correct?	158	1 about the ATE policy that was ultimately entered 2 into. Remember that discussion? 3 A We were going into an update call with 4 Beecher Carlson and I looked at it for about 5 30 seconds and then continued on to the call. It 6 would have been sometime in 2018 or '19 probably. 7 Q Did it seem curious to you that you were 8 only allowed to see one page from the ATE policy? 9 MS. SMITH: Objection to form. 10 A I disagree with the premise of the 11 question, sir. 12 BY MR. CLUBOK: 13 Q Okay. 14 MR. CLUBOK: Let's go off the record. 15 THE VIDEOGRAPHER: We are off the record 16 at 2:21 p.m. 17 (Recess taken from 2:21 p.m. CDT to 18 2:22 p.m. CDT) 19 THE VIDEOGRAPHER: 2:22 p.m., back on the 20 record. 21 BY MR. CLUBOK: 22 Q Did it seem unusual to you that 23 Mr. Sevilla just showed you a page on his computer 24 screen as opposed to sending you the policy so you 25 could see it yourself? 26 MS. SMITH: Objection to form. 27 A Under the circumstances, it wasn't unusual	160

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<p>1 in the slightest.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q What were the circumstances?</p> <p>4 A We were about to have a call with Beecher</p> <p>5 Carlson. I was going to give an update on the</p> <p>6 litigation. I wanted to see the actual on the</p> <p>7 page who the insureds were so I could match it up</p> <p>8 with who the defendants were.</p> <p>9 Q I see.</p> <p>10 A I saw a single page that had the listed</p> <p>11 insureds, I looked at that page for anywhere from</p> <p>12 15 to 20 seconds while I was on my way walking to</p> <p>13 a conference room to have the call.</p> <p>14 Q Did you see who the -- did you know who</p> <p>15 the insurer was for the policy?</p> <p>16 A I knew it was Sentinel, but the exact name</p> <p>17 of the Sentinel entity, I don't.</p> <p>18 Q How did you come to know that Sentinel was</p> <p>19 the insurer for the policy?</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 A I don't remember.</p> <p>22 MR. CLUBOK: Sorry, what was the form</p> <p>23 objection there?</p> <p>24 MS. SMITH: Well, there's more than one</p> <p>25 Sentinel entity and you said, how did you come to</p>	<p>1 you learn that Sentinel was the insurer for the</p> <p>2 ATE policy?</p> <p>3 A I don't recall how I learned, but it would</p> <p>4 have been sometime around the time of the</p> <p>5 transaction in August 2017.</p> <p>6 Q That's -- okay. But it was contemplated</p> <p>7 for at least a couple months prior to that that</p> <p>8 Sentinel would be the insurer for an ATE policy,</p> <p>9 correct?</p> <p>10 MS. SMITH: Objection, assumes facts not</p> <p>11 in evidence.</p> <p>12 A I don't know that that's right. I don't</p> <p>13 recall that.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q You specifically at one point contemplated</p> <p>16 that Sentinel would be the insurer for the ATE</p> <p>17 policy; isn't that true?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 A I disagree with one of the premises of</p> <p>20 your question. I'm happy to explain.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Yeah.</p> <p>23 A So if you're talking about what was</p> <p>24 contemplated in April of 2017, that was a</p> <p>25 completely different transaction than what was</p>
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<p>1 know that Sentinel was the insurer.</p> <p>2 MR. CLUBOK: Okay. Thank you.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q I'll use the term Sentinel with the</p> <p>5 understanding that it is -- there's many different</p> <p>6 related entities that are called Sentinel perhaps</p> <p>7 and we'll just talk generally like we sometimes</p> <p>8 talk Highland generally about Sentinel; is that</p> <p>9 okay?</p> <p>10 A I don't actually know what any of the --</p> <p>11 what the Sentinel entities are. I just kind of</p> <p>12 know generally the name Sentinel.</p> <p>13 Q Yeah. Colloquially you call the insurer</p> <p>14 Sentinel, whether it's Sentinel something</p> <p>15 something sub or Sentinel something something?</p> <p>16 A Yeah, I know there were at least a couple</p> <p>17 of entities, but --</p> <p>18 Q Okay.</p> <p>19 A -- where the roles were, I just don't</p> <p>20 know.</p> <p>21 Q Okay. I'm not asking you to comment on</p> <p>22 that by saying what Sentinel -- your understanding</p> <p>23 of Sentinel did or didn't do. Okay?</p> <p>24 A Okay.</p> <p>25 Q Okay. So with that understanding, how did</p>	<p>1 done in August of 2017. And so whatever role</p> <p>2 Sentinel was going to play in April was a</p> <p>3 different transaction than what happened in</p> <p>4 August.</p> <p>5 Q We'll talk about the differences</p> <p>6 between -- the supposed differences between the</p> <p>7 transactions. But certainly in April, you</p> <p>8 contemplated that Sentinel would write an ATE</p> <p>9 policy for the benefit of the Highland affiliates</p> <p>10 that were involved in the New York litigation,</p> <p>11 correct?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 A I don't recall exactly what the proposal</p> <p>14 was.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q Isn't it true that at some point you</p> <p>17 contemplated Sentinel would write an ATE policy</p> <p>18 for the benefit of the Highland affiliates?</p> <p>19 MS. SMITH: Objection, form.</p> <p>20 A I don't remember what the proposal was.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Do you -- and you don't remember ever</p> <p>23 contemplating that Sentinel would write an ATE</p> <p>24 policy; is that your testimony under oath?</p> <p>25 A That's not what I said, sir.</p>

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1 Q Okay. Well, then, answer my question as 2 opposed to a question you want to answer. Isn't 3 it true that at some point you contemplated 4 Sentinel would write an ATE policy for the benefit 5 of the Highland affiliates involved in the 6 New York UBS litigation?		1 Q Okay. Did you ever talk about the ATE 2 policy other -- about the -- strike that. 3 Did you ever talk about what the ATE 4 policy does for the insureds even if you didn't 5 see it?	
7 A I can -- I knew that Sentinel -- it was 8 contemplated that Sentinel would write an ATE 9 policy related to the UBS litigation, but who the 10 insureds were going to be and for whose benefit 11 that was going to be, I don't remember that 12 proposition at all.		6 A I don't recall those conversations. I'm 7 not sure that I did.	
13 Q And why do you claim the transaction that 14 was being contemplated in April of 2017 was 15 entirely different than the transaction that was 16 consummated in August of 2017?		8 Q So you don't know the terms, fair to say, 9 of the ATE policy other than the name of the 10 insureds, correct?	
17 A Because in April of 2017, what was 18 discussed then, and frankly didn't get very far, 19 was the idea of essentially getting into a 20 settlement agreement or getting to a number with 21 UBS for settlement and having an ATE policy serve 22 as kind of the funding mechanism for that 23 settlement. Two thousand -- August 2017 was -- 24 there was no settlement with UBS in service of 25 which the ATE policy would serve as a funding		11 A Correct. And even today I don't remember 12 what those names were. I just saw them on the 13 screen that one time.	
1 mechanism. So that's why they're two different 2 transactions.	166	14 Q So when you said with such certainty a 15 little bit ago under oath that the actual ATE 16 policy is entirely different than what you were 17 contemplating in April of 2017, that's not based 18 on actually knowing what the ATE policy actually 19 does?	
3 Q Did the August -- so the actual ATE policy 4 that was entered into, did it provide for the 5 funding of a future settlement with UBS?		20 MS. SMITH: Objection to form.	
6 A I don't know what the policy said. I've 7 never seen it.		21 BY MR. CLUBOK:	
8 Q You've never seen the ATE policy that was 9 actually executed?		22 Q Fair to say?	
10 A No, sir, other than that one page.		23 A I disagree with a premise of your 24 question. I'm happy to explain why.	
11 Q That was a bit of a double negative, so 12 I'm going to ask it again. It's my fault because 13 I asked a negative and then you said no, sir.		25 Q Please. Thank you.	
14 A Fair enough.			168
15 Q You're saying it's true that you never 16 saw -- strike that.		1 A The April proposed transaction, my 2 understanding of it -- or recollection to the 3 extent that I do, was that that was supposed to be 4 essentially part of a single process in which we'd 5 already gotten to a number with UBS and we'd 6 agreed on a settlement and were negotiating a 7 settlement agreement.	
17 It's true that you have to this day never 18 seen the entire ATE policy that was actually 19 executed, correct?		8 In August of 2017, there was no such 9 settlement agreement with UBS. And so kind of by 10 definition, they can't be the same thing.	
20 A It is true that to this day the only time 21 I've ever seen any part of the ATE policy was the 22 one page that I saw on Mr. Sevilla's screen for 23 about 15 to 20 seconds back in 2018 or '19.		11 Regardless of the terms of the ultimate policy in 12 August of 2017, it was a different transaction.	
24 Q All right. And you're sure about that?		13 Q But you don't know if the things that were 14 contemplated by the policy -- strike that.	
25 A Yes, I am, sir.		15 As you sit here today, you don't know if 16 the -- well, strike that.	
		17 In April of 2017, you identified pros and 18 cons of entering into what was then a contemplated 19 ATE transaction, correct?	
		20 A I don't recall if I did or not, sir.	
		21 Q You certainly reviewed the pros and cons 22 of entering into a contemplated ATE transaction in 23 approximately April 2017, correct?	
		24 MS. SMITH: Objection, assumes facts not 25 in evidence.	

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1 A Can you restate the question, sir?		1 MR. CLUBOK: Yes, this is the complete	
2 BY MR. CLUBOK:		2 copy of this attachment. Appendix 1 was sent in a	
3 Q You reviewed an identification of the		3 separate e-mail, which we'll get to.	
4 potential benefits of entering into the		4 MS. SMITH: Okay.	
5 contemplated ATE transaction in approximately		5 MR. CLUBOK: When they sent this	
6 April 2017, correct?		6 PowerPoint, they just had a placeholder for	
7 MS. SMITH: Objection to form.		7 Appendix 1, apparently, at least as far as we can	
8 A I remember it was a concept around that		8 tell.	
9 time, but -- that there would be an ATE policy to		9 A I've reviewed the document, sir.	
10 fund a potential settlement, but I really don't		10 BY MR. CLUBOK:	
11 remember much more than that.		11 Q Okay. Did you draft this document?	
12 BY MR. CLUBOK:		12 A I don't know if I did or not.	
13 Q Well, you remember that somebody had laid		13 Q Do you recognize it?	
14 out the potential benefits of doing that, correct?		14 A I know I've seen it before. I have no	
15 A Actually, I don't.		15 reason to dispute that I didn't receive it -- or	
16 Q Did you have any role in identifying the		16 send it, I should say.	
17 potential benefits of entering into an ATE		17 Q You didn't just receive it --	
18 transaction at any point?		18 A I said or send it, I should say.	
19 A Not that I recall, but if you would like		19 Q Okay. And you played some role in	
20 to show me a document, I'm happy to have my		20 drafting this document at least, correct?	
21 recollection refreshed.		21 A I don't remember if I did or not, sir.	
22 Q Okay. Let's hand you what's been marked		22 But the metadata will answer that question kind of	
23 as Exhibit 47. Exhibit 47 is an e-mail from you,		23 easily.	
24 Isaac Leventon, to JP Sevilla with a subject UBS		24 Q Isn't it true that you drafted this	
25 Settlement Structure (9.pptx), and it's dated		25 document together with Stephanie Vitiello?	
	170		172
1 April 19th, 2017. And it attaches a document		1 MS. SMITH: Objection, assumes facts not	
2 called UBS_Settlement_Structure_9.pptx.		2 in evidence.	
3 Do you see that?		3 A If that's what the metadata says, I don't	
4 A Yes.		4 dispute it, but I don't know or recall, I should	
5 Q And page 1 of Exhibit 47 is the cover		5 say.	
6 e-mail that has no substance in it, other than		6 BY MR. CLUBOK:	
7 what I just described, and the remaining pages are		7 Q Who -- do you recall being asked to draft	
8 the attachments. Do you see that?		8 a presentation like this?	
9 A I do, yes.		9 A I don't remember, sir.	
10 Q Now, the first page of the attachment says		10 Q You're looking at this document now and it	
11 Settlement Analysis, UBS versus, and has the		11 doesn't ring any bell as to the origin of this	
12 Highland logo, correct?		12 document?	
13 A It does.		13 MS. SMITH: Objection, form.	
14 Q And then the first page talks about what		14 A Like I said, I don't remember if I drafted	
15 happens: If Highland does not settle. And then		15 this document or not, but the metadata will answer	
16 the second page says: Taxes: If Highland Wins...		16 the question affirmatively.	
17 it Loses. Third page says: If Highland does not		17 BY MR. CLUBOK:	
18 settle: UBS Appeals. Et cetera, et cetera.		18 Q We would need the metadata to answer that	
19 Do you see that?		19 question given your lack of recollection, correct?	
20 A I'm reviewing the document.		20 A You would need the debtor to provide you	
21 (Witness reviews document.)		21 with that metadata.	
22 MS. SMITH: While he's looking at this,		22 Q What did you do with this presentation	
23 Andy, is this a complete copy of the exhibit?		23 other than send it to Mr. Sevilla?	
24 Because it -- there's an odd Appendix 1 on the		24 A I don't recall. But again, if I sent it	
25 last page.		25 to someone else, it would be in the debtor's	

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<p>1 documents.</p> <p>2 Q The second page of the attachment gives a 3 bottom line that there's no upside to going to 4 trial in either the UBS or the Citi matter, 5 correct?</p> <p>6 A Correct.</p> <p>7 Q Did you -- did Highland go to trial in the 8 Citi matter?</p> <p>9 A No.</p> <p>10 Q What happened in that matter?</p> <p>11 A It settled.</p> <p>12 Q For how much?</p> <p>13 A It was more than 500,000, but I think less 14 than a million.</p> <p>15 Q Okay. And when?</p> <p>16 A Oh, wow. 2018 or '19 sometime.</p> <p>17 Q Okay. So sometime after this presentation 18 was sent in April of 2017, correct?</p> <p>19 A Correct.</p> <p>20 Q And is that Citi matter totally settled, 21 done?</p> <p>22 A Yes.</p> <p>23 Q And it was settled for something less than 24 a million dollars?</p> <p>25 A That's my recollection.</p>	<p>173</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q At one point you specifically estimated 3 the liability in excess of hundreds of millions of 4 dollars -- strike that.</p> <p>5 At one point you, for purposes of a 6 solvency analysis, estimated the liability at 7 being well in excess of \$100 million, correct?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 A I don't recall what you're talking about, 10 but if you want to show me a document to refresh 11 my recollection, I'm happy to look at it.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q Do you -- as you sit here today, are you 14 able to deny that you did that?</p> <p>15 A I can neither confirm nor deny it, sir. I 16 just don't know what you're talking about.</p> <p>17 Q So you -- okay. Getting back to this. 18 You believed in April of 2017, that if UBS were to 19 win, Highland would lose all of the assets in HFP 20 and CDO Fund, correct?</p> <p>21 MS. SMITH: Objection to form. This is 22 not necessarily what he believes.</p> <p>23 MR. CLUBOK: Okay. Ms. Smith, I have not 24 said anything about your speaking objections. 25 Things like assumes facts not in evidence, saying</p>
<p>1 Q Okay. So the -- and the UBS case 2 meanwhile at this time was -- you knew that the 3 potential liability was over a billion dollars, 4 right?</p> <p>5 A I knew that UBS was alleging over a 6 billion dollars in damages against the 7 counterparty funds and it also alleged some quasi 8 contractual claims for that liability against HCM 9 itself.</p> <p>10 Q In fact, you knew that HCM faced potential 11 liability to backstop HFP and CDO Fund for up to 12 \$1.2 billion; isn't that true?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 A I knew that was UBS's argument. I didn't 15 necessarily agree with it.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Right. But you certainly were aware that 18 Highland was facing a clawback of \$9 million and 19 liability to backstop HFP and CDO Fund for up to 20 \$1.2 billion, correct?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 A I was aware that that was a possible worst 23 case scenario. I didn't necessarily agree that it 24 was probable or that UBS's arguments in support of 25 that position were valid.</p>	<p>174</p> <p>1 that comment you made there, I tried to ignore it, 2 because it goes beyond what you're allowed to say 3 in this proceeding. You say objection to form and 4 nothing else unless you want to -- unless you have 5 a privilege to assert. So please do not make any 6 further speaking objections.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Mr. Leventon, isn't it true that in April 9 of 2017, you believed that if UBS wins, Highland 10 would lose all the assets in HFP/CDO Fund?</p> <p>11 A I believed that that was one of the 12 worst-case scenarios that was possible, yes.</p> <p>13 Q And you believe that the HFP assets at 14 that time in April of 2017, included an 15 approximately \$32 million note payable from the 16 donor advised fund or the DAF, correct?</p> <p>17 A It does say that HFP assets include 18 32 million of DAF note payable.</p> <p>19 Q And that DAF refers to a DAF that was 20 established by Mr. Dondero?</p> <p>21 A I don't necessarily believe that's 22 correct, no.</p> <p>23 Q Who was the DAF established by?</p> <p>24 A I don't know specifically, but I believe 25 it was the debtor itself.</p>

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1 Q Okay. The debtor, though, was 80 percent 2 owned by Mr. Dondero, right?		1 A Sir, my testimony is I know that there was 2 some transaction that would have reduced 3 Mr. Dondero's economic interest and the documents 4 will speak for themselves as to exactly when that 5 transaction took place. I just -- I don't know 6 exactly when it took place.	
3 A I actually don't know.		7 BY MR. CLUBOK:	
4 MS. SMITH: Objection to form.		8 Q Okay.	
5 BY MR. CLUBOK:		9 A And I wasn't involved in that transaction 10 either.	
6 Q You don't know the ownership of -- prior 7 to bankruptcy, did you know the ownership interest 8 of Mr. Dondero and HCM?		11 Q All right. The DAF was considered an 12 affiliated entity to Highland Capital Management, 13 correct?	
9 A Immediately prior to bankruptcy, I think I 10 did because we had to know that type of 11 information for kind of first day schedules, but 12 prior to that, no.		14 A The compliance department via Mr. Surgent 15 determined that the DAF was not -- I don't 16 believe -- I think it determined it wasn't an 17 affiliate.	
13 Q Did you know -- because it came up many 14 times in the litigation with UBS and HCM, that 15 Mr. Dondero's stake in HCM in this time frame was 16 approximately 80 percent?		18 Q You believed that if Highland didn't 19 settle, it was facing years of fraudulent transfer 20 claims throughout the Highland structure, correct?	
17 MS. SMITH: Objection. I'm concerned that 18 he has confidentiality issues when you're talking 19 about things that happened in the course of 20 settlement or mediation.		21 MS. SMITH: Objection, form.	
21 MR. CLUBOK: No, no. This was in public 22 documents upon public documents upon public 23 documents, it was used in open court, it was said 24 in the trial. This is nothing confidential at 25 all.		22 A I believe that that was a possible 23 worst-case scenario.	
	178	24 BY MR. CLUBOK:	
1 BY MR. CLUBOK:		25 Q By the way, you don't use anywhere on this	
2 Q Isn't it true, sir, that in 2017, 3 Mr. Dondero's stake in HCM was approximately 4 80 percent?			180
5 A I don't know.		1 document that you sent to Mr. Sevilla possible 2 worst-case scenario to qualify what happens if UBS 3 wins, correct?	
6 Q Okay.		4 MS. SMITH: Objection to form.	
7 A It -- I don't know.		5 A No, these are -- if you read the document, 6 these are the kind of two extremes.	
8 Q You knew at the time of trial that 9 Mr. Dondero's stake was identified as being 10 approximately 80 percent; isn't that true?		7 BY MR. CLUBOK:	
11 A The reason I'm qualifying it is because I 12 know that there were some transaction that reduced 13 his interest from whatever it was down to a much, 14 much smaller percentage. I just don't remember 15 exactly when that transaction took place.		8 Q I understand.	
16 Q Okay. And that transaction you're 17 referring to was a transfer to trusts or something 18 that he still had the beneficial ownership in, 19 correct?		9 A If UBS wins or if Highland wins.	
20 A No, that's not correct.		10 Q Okay. But you don't say anywhere this is 11 possible worst-case scenario or otherwise qualify 12 it in this analysis, correct?	
21 Q Mr. Dondero had the vast majority of the 22 economic interest in Highland Capital Management 23 during the time frame that you wrote this memo; 24 isn't that true?		13 A It doesn't say that on that page.	
25 MS. SMITH: Objection, form.		14 Q On the other hand, that if Highland were 15 to win, you understood that that would result in 16 over \$50 million in tax liability to Mr. Dondero 17 personally, correct?	
		18 MS. SMITH: Objection to form.	
		19 A I don't think that's right. That's not 20 what it says here.	
		21 BY MR. CLUBOK:	
		22 Q If you can turn -- but it refers to 23 Slide 3. Do you see that?	
		24 A Yes.	
		25 Q And do you see where it says that: Taxes:	

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1 If Highland wins... it Loses?		1 BY MR. CLUBOK:	
2 A I do see that and it does say -- I was		2 Q Okay. But you -- again, my question was	
3 looking at the second page of the presentation.		3 just about Mr. Dondero, not all the other major	
4 Looking at the third page, it does say Mr. Dondero		4 banks and Wall Street. So getting back to my	
5 would have to pay approximately \$50 million in		5 question. You had specifically discussed with	
6 taxes.		6 Mr. Ellington that there would be significant tax	
7 Q Yeah. So you understood -- and by the		7 consequences for Mr. Dondero if Highland were to	
8 way, all the other people who would have suffered		8 defeat UBS in the litigation with respect to the	
9 tax consequences if Highland were to win would		9 claims against HFP, correct?	
10 have had a litigation claim for mismanagement			
11 against HCM and Dondero, correct?			
12 A They could have asserted that claim. It		10 A Well, I'm disagreeing with the word	
13 was -- I mean, my job was to identify risk. That		11 specifically, because we discussed that among	
14 was a risk I identified.		12 numerous other potential parties that would have	
15 Q And you also understood at the time, that		13 significant tax consequences, not just the ones on	
16 Dondero was the decision-maker for Highland		14 this page.	
17 Financial Partners, correct?		15 Q I didn't say exclusively, I said	
18 A I believe that's right.		16 specifically. I'm not using the word exclusively.	
19 Q And getting back to Mr. Dondero's --		17 I'm using the word specifically. You specifically	
20 consequences to Mr. Dondero, if Highland were to		18 identified that there would be a \$50 million plus	
21 win completely at trial, that would mean that		19 tax hit to Mr. Dondero, correct?	
22 Mr. Dondero personally would have a \$50 million		20 A I don't remember if I drafted this	
23 tax hit, correct?		21 document or not, but this document specifically	
24 A That's what this says.		22 lists a \$50 million potential tax liability for	
25 Q And that was your understanding at the		23 Mr. Dondero.	
	182	24 Q So you were aware of that specifically	
1 time, right?		25 with respect to Mr. Dondero, correct?	
2 A I would say that is what had been			
3 represented to me by the tax department and it is		184	
4 nonincumbent on a nontax person to second-guess		1 A I would have been aware of that and the	
5 what the tax department says is going to happen in		2 variety of other parties, yes.	
6 a given situation.		3 MR. CLUBOK: Move to strike.	
7 Q Sure. And it was -- you had also		4 BY MR. CLUBOK:	
8 discussed that with Mr. Ellington too, that there		5 Q I'm not asking about those. I'm going to	
9 would be significant tax consequences for		6 get to what you were aware about the other	
10 Mr. Dondero if Highland were to defeat UBS and		7 parties. So with respect to Mr. Dondero, though,	
11 therefore HFP were to be solvent, correct?		8 fair to say that you and Mr. Ellington, amongst	
12 A We had discussed the consequences to		9 other conversations about the tax consequences of	
13 Dondero, but also to all of the other HFP limited		10 HFP prevailing, specifically discussed that would	
14 partners.		11 mean more than a \$50 million hit to Mr. Dondero,	
15 Q Right. But the specific consequences to		12 correct?	
16 Dondero -- economic consequences dwarfed all the		13 A We discussed that among the parties that	
17 others, correct?		14 would suffer significant tax consequences,	
18 A Well, this isn't --		15 Mr. Dondero was one of them and that the tax	
19 MS. SMITH: Objection to form.		16 department had advised us that his exposure was	
20 A This isn't all the limited partners in		17 approximately \$50 million.	
21 HFP. There were -- almost every Wall Street bank		18 Q Okay. Thank you. Now, by the way, that's	
22 you could think of had a significant interest in		19 because HFP had been insolvent or been declared	
23 HFP and would have been in the same situation as		20 insolvent prior to this time, correct?	
24 the people listed on Slide 3.		21 A I believe that's correct.	
25		22 Q And HFP, in fact, was insolvent going back	
		23 to prior to the time you joined Highland Capital	
		24 Management in 2009, correct?	
		25 A That's correct.	

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1 Q And it's also the case that you had 2 determined -- strike that. I say you. 3 It's also the case that HCM had determined 4 that CDO Fund was insolvent, correct? 5 A I think that's fair, yes.		1 Q Well, was it truthful? 2 A I assume so. I have no idea actually. 3 Q Do you have any reason to believe that 4 CDO Fund was not insolvent as of March 2009? 5 A No.	
6 Q And they had made that determination prior 7 to April of 2017, correct? 8 A Yes. 9 Q And SOHC was just -- SOHC just was a 10 wholly owned sub of HFP. So SOHC was also 11 insolvent dating back to prior to when you joined 12 HCM, correct? 13 MS. SMITH: Objection, form. 14 A I don't know the answer to that question 15 because I don't remember if there was an 16 insolvency analysis on SOHC. 17 BY MR. CLUBOK: 18 Q There was no separate -- you're not aware 19 of a separate insolvency analysis specific to SOHC 20 as opposed to it being part of the consolidated 21 group that included HFP, correct? 22 A I remember that there was a letter that 23 went out to HFP investors that said HFP is 24 insolvent and that that was approximately January 25 of 2009, but it didn't mention SOHC and there was	186	6 Q Do you have any reason to believe that HFP 7 was not insolvent as of January 2009? 8 A No. Those are accounting determinations 9 and the accountant's determinations on those 10 issues are final. 11 Q But the concern in layman's terms or 12 colloquial terms was that if HFP were to defeat 13 UBS at trial, that insolvency determination might 14 have to be in some measure reversed, thus 15 generating tax liability; is that correct, in -- 16 MS. SMITH: Objection, form. 17 BY MR. CLUBOK: 18 Q -- in a rough approximation without being 19 technical? 20 A It's partially correct. 21 Q What's partially not correct? 22 A Well, I think it -- at that time it was 23 both -- for HFP, it was just UBS. For CDO Fund, 24 it was UBS and Citibank, I think. 25 Q But the Citibank -- was that the million	188
1 no separate equivalent letter for SOHC. 2 Q Okay. Well, there are no investors to 3 SOHC. SOHC is just a wholly owned sub of HFP, 4 correct? 5 A HFP is SOHC's sole investor, yes. 6 Q Okay. And as of at least January 2009, 7 HFP was insolvent, correct? 8 A Yes. 9 Q And also as of January 2009, CDO Fund was 10 insolvent? 11 A I believe that CDO Fund's letter went out 12 to its investors closer to like March of 2009, so 13 it would have been that time period. Now, from an 14 accounting perspective when exactly were they 15 insolvent, I don't know. 16 Q Okay. 17 A But from a legal perspective when did we 18 give notice to -- or when -- let me rephrase, 19 sorry. When did Highland give notice to the 20 investors in those respective entities, those are 21 the documents I've seen and that I remember. 22 Q Okay. So CDO Fund was insolvent at or 23 prior to March of 2009, correct? 24 A It stated to its investors, I think in 25 March of 2009 that it was insolvent.		1 dollar liability -- or the matter to Citibank that 2 was ultimately settled for less than a million 3 dollars? 4 A Yes. 5 Q I see. So CDO Fund -- I guess I don't 6 understand. 7 A Let's back up and do this again. 8 Q Sure. With respect to HFP -- 9 A Okay. 10 Q -- the concern was that if it were to 11 defeat UBS at trial and be able to retain some of 12 the assets it held, the insolvency determination 13 could be reversed to some degree thus generating 14 the tax liability, correct? 15 A I believe that's a fair description 16 without sitting here today and being a tax expert. 17 Q And there was a similar concern with 18 respect to the CDO insolvency determination, if 19 somehow CDO were to fully prevail against UBS and 20 be able to retain the assets? 21 A Again, that's partially correct with 22 respect to CDO Fund. 23 Q Well, you're saying that that was also a 24 potential concern with respect to Citi in addition 25 to that being true with respect to UBS, correct?	

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<p>1 A I think for Citi -- let me -- sorry, let 2 me rephrase. For CDO Fund, the insolvency would 3 be reversed if it successfully defeated both UBS 4 and Citibank.</p> <p>5 Q Right. Right. So it -- CDO Fund would 6 have had to win both in order to have insolvency 7 analysis reversed?</p> <p>8 A As of this time period, that's correct.</p> <p>9 Q Right.</p> <p>10 A Please let me know when we hit a break.</p> <p>11 Q Oh, we can take a break if you want.</p> <p>12 A You sure?</p> <p>13 Q Of course.</p> <p>14 A I wanted to let you finish your series of 15 questions.</p> <p>16 Q I like to give people breaks within reason 17 whenever they ask. You've been good about that.</p> <p>18 THE VIDEOGRAPHER: We are off the record 19 at 2:57 p.m.</p> <p>20 (Recess taken from 2:57 p.m. CDT to 21 3:06 p.m. CDT)</p> <p>22 THE VIDEOGRAPHER: The time is 3:06 p.m. 23 We are back on the record.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Going back to page 2, one of the things</p>	<p>189</p> <p>1 seven-step proposal to determine whether it could 2 possibly be considered to be a fraudulent 3 transfer?</p> <p>4 A In the context, I don't believe that would 5 have made any sense to conduct --</p> <p>6 Q Is that a no to my question?</p> <p>7 A -- that analysis. Well, it's a -- it 8 would have been counterintuitive and non -- 9 illogical to kind of perform that analysis in 10 conjunction with this proposal because this was 11 supposed to be a proposal for a settlement with 12 UBS.</p> <p>13 Q And what you testified before under oath 14 was that the thinking was that there would be a 15 settlement first with a number and then you'd go 16 out and get an ATE policy to fund that settlement. 17 I'm paraphrasing a little, but that's the way 18 you've described it several times today, correct?</p> <p>19 A Essentially that you would be on the 20 precipice of settlement, that you would be close 21 enough that it was worth going out and getting 22 funding for what ultimately would be the 23 settlement.</p> <p>24 Q But in your -- the way you described it 25 earlier today, you would already know the amount</p>
<p>1 that was contemplated if UBS wins is that Highland 2 could face years of fraudulent transfer claims 3 throughout the Highland structure, correct?</p> <p>4 A That was one of the things that was 5 contemplated, yes.</p> <p>6 Q And fraudulent -- there were fraudulent 7 transfers claims in the New York litigation, 8 right, in addition to breach of contract claims we 9 talked about?</p> <p>10 A Yes.</p> <p>11 Q When this -- and by the way, this 12 settlement analysis ends with a proposal -- a 13 seven-step proposal, right?</p> <p>14 A It does appear to have a proposed 15 settlement structure summary.</p> <p>16 Q As far as you know, was any analysis done 17 of this seven-step proposal to determine whether 18 it would constitute a fraudulent transfer?</p> <p>19 A Well, I guess that assumes -- that assumes 20 facts that I disagree with, and I can explain why.</p> <p>21 Q My question is this: There was a -- 22 there's a settlement analysis that includes a 23 seven-step proposal for consideration, right?</p> <p>24 A Yes.</p> <p>25 Q And was there any analysis done about that</p>	<p>190</p> <p>1 of the settlement prior to getting the ATE policy, 2 correct?</p> <p>3 A Maybe that was a slight overstatement. I 4 should have said approximate amount.</p> <p>5 Q Okay. You'd know the approximate amount?</p> <p>6 A Right.</p> <p>7 Q And what was the approximate amount that 8 was being contemplated in terms of settling with 9 UBS when this proposal was being considered?</p> <p>10 A I don't know because all the settlement 11 conversations were -- as far as I was aware, were 12 between yourself and Mr. Ellington.</p> <p>13 Q What did you understand the approximate 14 amount of settlement that was being contemplated?</p> <p>15 A I didn't have an understanding.</p> <p>16 Mr. Ellington did not share that information with 17 me.</p> <p>18 Q You had no idea if it was 1 million or 19 \$100 million?</p> <p>20 A I didn't.</p> <p>21 Q And did you ever come to have any 22 understanding at all of a magnitude of a potential 23 settlement with UBS?</p> <p>24 A Yes.</p> <p>25 Q Okay. When was that?</p>

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1 A There was a proposed settlement with UBS 2 for I want to say 72.5 million that was drafted 3 but never executed. I want to say that was in 4 2014 or '15 sometime. That's when I had an 5 understanding of a magnitude of potential 6 settlements with UBS. 7 Q Okay. And that settlement after -- you 8 understood that that settlement wasn't executed, 9 although there was a settlement with two of the 10 defendants, namely Crusader and Credit Strategies, 11 correct? 12 A Those were subsequent separate settlement 13 agreements is my understanding. 14 Q Okay. 15 A That there was a proposed -- I'll call it 16 global settlement, which was all of the claims 17 filed by UBS against all of the defendants, that 18 was drafted but never fully executed and then 19 there were separate executed settlements between 20 UBS and Crusader on the one hand and UBS and 21 Credit Strategies on the other. 22 Q And that was all in the 2014-2015 time 23 frame, correct? 24 A I think it was primarily 2015. 25 Q Okay. After that point, did you ever		1 struggling with the question, but I -- this is -- 2 this is the summary, I guess, of the potential 3 outcomes if the settlement process is completed. 4 Q If the settlement process that's laid out 5 in this presentation is completed? 6 A Yes. 7 Q Okay. And the first -- one thing that 8 would happen is that Sentinel would then control 9 HFP/CDO Fund assets, correct? 10 A That's what this says, yes. 11 Q And it was believed that it was currently 12 a total of about \$94 million, right? 13 A That's what the document says. I have no 14 independent recollection of that information. 15 Q Who determined that the assets were worth 16 approximately \$94 million at this time? 17 A I don't know. It would have been someone 18 in the accounting department most likely. 19 Q Did they do that at your direction? 20 A I don't remember that. 21 Q Do you see at the very last page of this 22 document it says Appendix 1 and it's blank? 23 A I do see that, yes. 24 Q And Ms. Smith asked before if we had a 25 complete document here and I had said I believe	
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1 again hear about any magnitude of a potential 2 settlement with UBS? 3 A No, not that I recall. 4 Q When you were involved with this 5 settlement analysis, was there any number being 6 contemplated for a total amount that would be used 7 to settle with UBS? 8 A I wasn't contemplating any amount and I 9 don't know what other people were or were not 10 contemplating. 11 Q Well, let's look at the document further 12 and see if it's here. You see on -- let's start, 13 though, with Slide 6. Slide 6 says: If Highland 14 Settles... 15 You see that? 16 A Yes. 17 Q And under -- and this is assuming the 18 proposal that's going to be laid out step by step 19 later in the presentation, correct? 20 A I'm sorry, say that again. 21 Q This -- if Highland settles and all these 22 things that would happen, this assumes that the 23 seven-step proposal that's laid out later in the 24 presentation goes into effect, correct? 25 A I think that's -- I apologize. I'm	1 that Appendix 1 was sent separately from this 2 e-mail. And I'm going to hand you what we'll mark 3 as Exhibit 67. 4 (Deposition Exhibit 67 marked for 5 identification.) 6 BY MR. CLUBOK: 7 Q Exhibit 67 is an e-mail from you to 8 Stephanie Vitiello, dated April 13th, 2017, that 9 is -- got a subject UBS Settlement Assets.xlsx and 10 it's got an attachment, which is the second page 11 of Exhibit 67. And you'll note on the first page 12 in the cover e-mail it says, Appendix 1. Do you 13 see that? 14 A I do. 15 Q And if you turn to the second page, you 16 see there is a list of assets with the bottom -- 17 in the middle towards the bottom it says, Total 18 Assets 94,057,547. Do you see that? 19 A I'm sorry, say that one more time, please. 20 Q Do you see where there's a subtotal -- or 21 there's a total of all the total assets and a 22 black bar towards the bottom of the page? Do you 23 see that? 24 A The gross assets? 25 Q Yeah.		

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1 A Okay.		1 the Excel spreadsheet. I just don't want to keep	
2 Q The gross assets total, according to this,		2 talking about this knowing that I think there's an	
3 about \$94 million. Do you see that?		3 error in the formula. It's just like somebody,	
4 A I do see that, yes.		4 you know, an Excel, like they didn't add the last	
5 Q And this document on page 1 is identified		5 line in or something like that, so I believe this	
6 as Appendix 1, and you can see at the end of		6 total, which looks like it totals everything, is	
7 Exhibit 47, it's a reference to Appendix 1 and the		7 really just totalling everything except for the	
8 94 million matches up with page 6. Do you see all		8 cash, just so you know.	
9 that?			
10 A I do see that, yes.		9 A Okay. I'll -- I won't re-create the math	
11 Q And Stephanie Vitiello was a woman that		10 here. That's certainly a possibility.	
12 you said worked with you sometimes on various		11 Q And we can do that. We can -- we'll have	
13 matters?		12 the Excel thing if we want to do it later. We'll	
14 A She's an attorney who worked with me, yes.		13 show it to you, but I just want to make that	
15 Q Yeah. And the question is, did you -- who		14 clear. I'm not trying to -- it looks like, for	
16 would you have gone to to generate Appendix 1 that		15 what it's worth, I take it you never -- you never	
17 you were sending to Stephanie Vitiello on		16 knew about that potential error, until I just	
18 April 13th, 2017?		17 mentioned it, right?	
19 MS. SMITH: Objection, form.		18 A I'm kind of embarrassed that there's an	
20 A I don't know specifically. It would have		19 error in a Highland document that --	
21 been someone in the accounting department I would		20 Q Well, it's Excel. I could -- bottom line	
22 guess.		21 is, I presume that you would have just relied on	
23 BY MR. CLUBOK:		22 the Excel, you know, calculation to assume that	
24 Q And that is your e-mail address, right, on		23 the right number is 94, whether or not there's an	
25 Exhibit 67?		24 error.	
	198		200
1 A 67 or 47?		1 I believe that it -- first of all, I'm not saying --	
2 Q 67. The Appendix 1.		2 again, you're saying you and I'm not sure that I	
3 A Sorry, I was looking at the wrong one.		3 drafted this document that's attached to	
4 Say that -- let's have a clean record. Why don't		4 Exhibit 47. But it does appear that whoever	
5 you repeat your question one more time.		5 drafted it included the number from document 67.	
6 Q Sure. Exhibit 67 is an e-mail from you to		6 Q Right. Fair enough. And whoever put	
7 Stephanie Vitiello attaching what becomes		7 together that Excel spreadsheet, I'm not asking	
8 Appendix 1 for the settlement analysis that's		8 you to -- I'll represent to you that it appears	
9 reflected in Exhibit 47, correct?		9 there was an error, which you can look at at	
10 A I don't have any independent recollection,		10 your -- at the time and just -- I take it -- I	
11 but that's what this appears to be.		11 only bring this up because I take it you never --	
12 Q By the way, I will represent to you that		12 no one ever brought this potential error to your	
13 we got a native file of Exhibit 67, this Excel		13 attention until now?	
14 spreadsheet. And if we need to, we will, but I		14 A I don't remember this document and I don't	
15 will tell you for the record that that 94 million		15 remember any mention of an error.	
16 appears to be the function of an error in the		16 Q Okay. That's fine.	
17 calculation and it seems to have -- that		17 So turning back, then, to the document.	
18 94,057,547 I'll just represent to you and we can		18 When it says Sentinel controls, that's why when I	
19 put the Excel spreadsheet up at some point if		19 say currently 94, let's just agree that it was	
20 necessary, it's the total for all the assets		20 intended to be the total of Appendix 1 regardless	
21 above, not including the cash. So when you add		21 of whether there's an error or not; is that fair?	
22 the cash in there, it gets up to something more		22 MS. SMITH: Objection to form.	
23 like 98 or 99 million.		23 A Sir, because I don't have any independent	
24 A Okay.		24 recollection of this, I can only say that your	
25 Q That's my understanding. We can pull up		25 analysis of the documents seems to be a fair one,	

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1 but I'm not saying that's what happened. It just 2 happens to be something that might have been what 3 happened.		1 again because the problem is we're so off base 2 that I'm being -- I'm confused as to how to answer 3 the question.	
4 BY MR. CLUBOK:		4 BY MR. CLUBOK:	
5 Q Okay. Thanks for that clarification. 6 In any event, whether it's 94 or 98, that 7 doesn't change the point that's being made in 8 No. 1, which is if Highland settles, Sentinel 9 would control the HFP/CDO Fund assets?		5 Q Well, it's your document, so I'm asking -- 6 MS. SMITH: Objection, form. 7 BY MR. CLUBOK: 8 Q It's a document that you sent to 9 Mr. Sevilla, correct?	
10 A Which page are you on, sir?		10 A It is a document that I attached to an 11 e-mail to Mr. Sevilla, yes.	
11 Q Back to page 6. So if Highland were to 12 settle under the proposal that's being 13 contemplated in this document, Sentinel would then 14 control the HFP/CDO Fund assets referenced in -- 15 at least in Appendix 1?		12 Q And with no -- with no further 13 explanation, you just sent this document to 14 Mr. Sevilla?	
16 A That's what this document says.		15 A In Exhibit 47, I just sent the document to 16 Mr. Sevilla.	
17 Q And the contemplation was that Sentinel 18 and Highland Capital Management could then use 19 those assets that had originated at HFP and 20 CDO Fund to generate cash to pay a UBS settlement, 21 a Citi settlement and outstanding legal fees, 22 correct?		17 Q Okay. And you at one point in the 18 document -- at one point -- strike that. 19 At one point the document refers to 20 Dondero's tax liability as 50 million plus and 21 here it talks about HCMLP's \$50 million plus tax 22 liability. You see that?	
23 A That is what this says.		23 A The document refers to Dondero's potential 24 tax liability of \$50 million plus and HCMLP's tax 25 liability of \$50 million plus.	
24 Q And you have no reason to believe that you 25 had a different understanding than what was in	202		204
1 this document at the time, as you sit here today, 2 correct?		1 Q Right. And I guess if you go back to -- 2 A Oh, actually, I answered that question 3 wrong. There's going to be part of my testimony 4 I'll need to correct.	
3 A I don't remember it so I don't remember if 4 I had a different belief or not at the time.		5 Q Sorry, what -- 6 A Because I messed up.	
5 Q Okay. And then -- and then another 6 benefit is that it says HCMLP's \$50 million tax 7 liability would be avoided. Do you see that?		7 Q Go ahead and correct it now, then. As 8 they say, by the way, deposition testimony is not 9 a take home exam, so please correct it now if you 10 can.	
8 A It does.		11 A So whoever owned HCMLP would be completely 12 irrelevant to the tax liability. It's tax 13 liability associated with HFP, not HCMLP.	
9 Q It doesn't say Jim Dondero's \$50 million 10 plus tax liability. You see that?		14 Q Right. It's owners of HFP?	
11 A Yeah, I -- it doesn't, but I think you're 12 conflating two issues.		15 A Right. But that means that ownership of 16 HCMLP is not relevant to this inquiry.	
13 Q How so?		17 Q Unless you're treating the economic 18 interest of HCMLP interchangeably with Mr. Dondero 19 and a few other limited partners, correct?	
14 A Well, it's a limited partnership. So the 15 liability would be at HCMLP and it would flow 16 through to the limited partners.		20 MS. SMITH: Objection, form.	
17 Q But the only limited partners at HCM at 18 that time -- or the only significant limited 19 partners at HCM at that time were Jim Dondero and 20 Mark Okada, right?		21 A That's -- no, that's completely incorrect, 22 sir.	
21 MS. SMITH: Objection, form.		23 BY MR. CLUBOK:	
22 A First of all, I don't remember who the 23 significant limited partners were. I've already 24 told you that, depending on what time period it 25 is, but your -- I'm -- here, ask the question		24 Q All right. Let's just continue with the 25 document here, though. It says: Residual assets	

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1 (up to \$50 million) stay at Sentinel.		1 it be pretty curious to negotiate a settlement	
2 Do you see that?		2 amount and then buy an insurance policy if you	
3 A I do.		3 already know exactly what the settlement amount	
4 Q Now, that's residual assets after using		4 is?	
5 the assets to generate cash to pay the UBS		5 MS. SMITH: Objection.	
6 settlement. Do you see?		6 BY MR. CLUBOK:	
7 MS. SMITH: Objection, form.		7 Q Doesn't that seem curious to you if it was	
8 A It is bullet point 3 below bullet point 2.		8 that way?	
9 BY MR. CLUBOK:		9 MS. SMITH: Objection, form.	
10 Q Sorry, bullet point 4 below bullet		10 BY MR. CLUBOK:	
11 point 2?		11 Q Instead of the way it's laid out here?	
12 A Yes, you're right, bullet point 4, below		12 A Not necessarily, no.	
bullet point 2.		13 Q Seems perfectly appropriate to you -- you	
14 Q And fair to say, then, that the		14 said before that ATE policies are standard issue	
15 contemplation here is that the total settlements		15 or something -- some comment like that. You	
16 in outstanding legal fees would total something		16 remember that?	
17 approximately \$44 million under what's being		17 A It's a matured industry. It's fairly	
18 contemplated on page 6 here?		18 commonly used in a variety of different	
19 MS. SMITH: Objection, form.		19 jurisdictions.	
20 A That's not really accurate, sir.		20 Q And is it fairly commonly used after a	
21 BY MR. CLUBOK:		21 settlement amount has been negotiated to then come	
22 Q Why not?		22 up with an ATE policy to fund a known settlement	
23 A Because bullet point 4 says up to		23 amount?	
24 \$50 million.		24 A I don't know. I don't know the ATE	
25 Q Up to 50 million. Okay. So it's		25 industry that well to be able to say one way or	
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1 contemplated that the total settlement of the		1 another, sir.	
2 claims against UBS, Citi -- strike that.		2 Q Well, you said under oath that it's	
3 It's contemplated the total settlement of		3 commonly used, or words to that effect, and my	
4 the claims brought by UBS and Citi along with		4 question is do you really have any idea whether	
5 outstanding legal fees associated with those		5 it's commonly used in that way, specifically after	
6 claims would be at least \$40 million and -- plus		6 a settlement amount has been already negotiated?	
7 more, up to another \$50 million; is that fair?		7 A I don't know one way or another.	
8 A I -- I mean, I guess if that's how you		8 Q Do you know one way or the other whether	
want to describe the document, sir. But since I		9 the way the ATE policy that was ultimately bought	
10 don't remember the document, I really have nothing		10 in this case comports with the common use of ATE	
11 to add other than what's on the page.		11 policies the way you used that phrase earlier	
12 Q So turning to page 8, it summarizes the		12 today?	
13 UBS Settlement: Structure Summary. Do you see		13 A I've never seen the ATE policy that was	
14 that?		14 executed in August 2017, so I don't know one way	
15 A I do.		15 or another.	
16 Q And Step 1 actually is that HFP and		16 Q Did you have access to that policy if you	
17 CDO Fund buy the \$100 million ATE policy from		17 had wanted to see it?	
18 Sentinel. Do you see that?		18 A I think I did at one point.	
19 A I do.		19 Q At what point?	
20 Q That's the very first thing contemplated		20 A I think it was e-mailed to me at one	
21 before even negotiating a settlement amount with		21 point.	
22 UBS, according to this document that you sent		22 Q Sorry, it was e-mailed to you?	
23 Mr. Sevilla, right?		23 A I think that's right.	
24 A That's correct.		24 Q You said you never had it.	
25 Q And indeed if you think about it, wouldn't		25 A No, I said I never looked at it, sir.	

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1 T here's a difference.		1 h ad I seen it and I haven't, other than the page.	
2 Q It was e-mailed to you and you never --		2 BY MR. CLUBOK:	
3 why was it e-mailed to you?		3 Q Has anything happened since I asked you	
4 A I don't recall. I would have to -- I		4 those questions to refresh your recollection that	
5 would have to look. I don't remember.		5 you actually were e-mailed a copy of that policy?	
6 Q Did you just remember that it was e-mailed		6 A I'd have to think about it. I don't know.	
7 to you? Because I asked you many times earlier		7 Q I'm asking you that question.	
8 today if you ever saw the policy. When I asked		8 A I know and I'm thinking --	
9 you those questions, did you remember that it had		9 Q It's only been about an hour. Did	
10 been e-mailed to you but just didn't mention that?		10 something happen since I asked those questions	
11 A I've never seen the policy, sir. That		11 that refreshed your recollection that you actually	
12 is -- that is true.		12 had been e-mailed a copy of that policy; anything	
13 Q Understood. But when I asked you those		13 at all?	
14 questions earlier today, did you remember that it		14 MS. SMITH: Objection to form.	
15 was e-mailed to you, or did something since I		15 A I'd have to think about it, Mr. Clubok. I	
16 asked those questions refresh your recollection?		16 don't --	
17 A I'd have to think about it. I'm sorry.		17 BY MR. CLUBOK:	
18 Q I would like you to think about that. I		18 Q Think about it.	
19 asked you many times earlier in this deposition		19 A Okay.	
20 just within the last couple hours in many		20 Q Did anything happen since I asked you	
21 different ways whether you had ever seen the		21 those questions to refresh your recollection that,	
22 policy. What I'd like to know is when I was		22 in fact, you had been e-mailed a copy of that	
23 asking those questions and you were giving		23 policy?	
24 answers, did you know, like you just volunteered		24 A I'm not sure. I'd need to think about it	
25 now, that it had been e-mailed to you or did		25 further.	
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1 something happen since I asked you those questions		1 Q Did your lawyer show you anything at all	
2 to refresh your recollection on that subject?		2 that refreshed your recollection?	
3 MS. SMITH: Objection, form.		3 A No.	
4 A I'd have to think about it, Mr. Clubok.		4 Q Did your lawyer say anything to you in any	
5 We could take a break, but I don't -- I don't		5 way that refreshed your recollection?	
6 know.		6 MS. SMITH: Objection, privileged.	
7 BY MR. CLUBOK:		7 A I'm not going to talk about what my lawyer	
8 Q I'd like you to think about it and give		8 said to me.	
9 the answer. I've asked you a question. You don't		9 BY MR. CLUBOK:	
10 take a break in between a question and answer, as		10 Q Did you speak to anyone at all?	
11 you know.		11 A The only people I have conversed with	
12 A Fair enough.		12 today are my wife and my attorneys.	
13 Q So I asked you those questions earlier		13 Q Did you review anything in --	
14 today about whether you'd ever seen the insurance		14 A No, sir.	
15 policy and in a number of different ways you said		15 Q And what caused you to suddenly remember	
16 absolutely not, except for the one page that was		16 and say that you had been e-mailed a copy of that	
17 shown to you on the screen. And my question to		17 policy?	
18 you is, when I was asking you those questions, did		18 A I've given you my testimony, sir.	
19 you remember that it had been e-mailed to you even		19 Q What caused you to suddenly think of that;	
20 if you didn't look at it?		20 do you know? Or is your answer you have no idea?	
21 A I don't --		21 A I mean, I think my answer is that I have	
22 MS. SMITH: Objection to form.		22 nothing to say that's not potentially subject to	
23 A I don't think that was something I was		23 privilege.	
24 thinking about when you asked me those questions		24 Q So there was something that occurred that	
25 because I was answering the question you asked,		25 caused you to refresh your recollection about	

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1 being e-mailed that document but you can't say 2 because of privilege; is that what you're saying? 3 MS. SMITH: Objection, form.		1 previously marked as Exhibit 56. This is an 2 e-mail from you -- sorry, from JP Sevilla to you, 3 attaching the ATE policy in response to an e-mail 4 that you sent on October 25, 2017, at 3:23 p.m. 5 with the subject: UBS ATE Policy, and a note that 6 says: Will you please send me a copy of the final 7 executed insurance agreement? 8 Do you see that?	
4 A I'm not going to -- I've given you my 5 testimony, sir.		9 A I do.	
6 BY MR. CLUBOK:		10 Q Why did you ask Mr. Sevilla to send you a 11 copy of the final executed insurance agreement 12 that you called the UBS ATE policy?	
7 Q Why were you e-mailed a copy of the 8 policy?		13 A I don't recall.	
9 A I don't recall.		14 Q Did you --	
10 MS. SMITH: Can we go off the record for 11 one second?		15 MS. SMITH: Objection, form.	
12 MR. CLUBOK: Sure.		16 BY MR. CLUBOK:	
13 THE VIDEOGRAPHER: Off the -- off the 14 record at 3:34 p.m.		17 Q Did you recall that you had asked for this 18 policy before I just showed you this document?	
15 (Recess taken from 3:34 p.m. CDT to 16 3:42 p.m. CDT)		19 A Actually, I don't remember this e-mail at 20 all.	
17 THE VIDEOGRAPHER: The time is 3:42 p.m. 18 We are back on the record.		21 Q And what did you do when you got the 22 policy? You just got it and didn't look at it?	
19 BY MR. CLUBOK:		23 A Actually I don't even want to look at it 24 now. I haven't seen it before.	
20 Q So earlier today I asked you if you ever 21 tried to see a copy of the ATE policy in 22 connection with your work at Highland and you said 23 I never asked to see a copy of the ATE policy that 24 I recall. Do you remember that?		25 Q Well, I would like you to look at it, and	
25 A Yes.	214		216
1 Q And at the time I asked you that question, 2 were you thinking that you had asked to get a copy 3 of it but not to see a copy of it? Is that a 4 distinction you were drawing in your mind when you 5 answered that question?		1 you asked Mr. Sevilla for the policy, correct?	
6 A I don't think so. I was actually 7 answering the question that you asked, which was 8 did I ever ask to see a policy copy and I never 9 did.		2 A That's what this appears to say, yes.	
10 Q And when I asked you that question did you 11 remember that you had asked for a copy of the 12 policy?		3 Q That's your e-mail to Mr. Sevilla, right?	
13 A When I was answering that question, I 14 don't believe so. I think I was answering the 15 question in front of me.		4 A Yes.	
16 Q So what's caused you now -- by the way, 17 did you ever ask for a copy of the document?		5 Q ILeventon@HighlandCapital.com was you in 6 October 2017, right?	
18 A I don't recall, but if you'd like to show 19 me a document to refresh my recollection, I may 20 have.		7 A Yes.	
21 Q Okay. So I earlier asked you if you had 22 access to it, you said you did have access. Did 23 you ever ask for a copy of the policy?		8 Q Okay. And let's look at the document.	
24 A I don't remember.		9 Your testimony is that you got this -- you made a 10 point of asking Mr. Sevilla for it, you got it and 11 then you never looked at it?	
25 Q I'm going to hand you what's been		12 A Correct.	
		13 Q Why?	
		14 A I don't remember, sir.	
		15 Q Why did you want it?	
		16 A I don't remember, sir.	
		17 Q What did you do with it?	
		18 A I don't remember, sir.	
		19 Q And you didn't even remember asking for it 20 until I just showed you this document, correct?	
		21 A I didn't remember asking Mr. Sevilla for 22 it, no.	
		23 Q Do you consider yourself to have a good 24 memory?	
		25 A You know, I literally send and received	

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	217		219
1 probably 10,000 e-mails over this time period. I		1 Q That's the entity that we often commonly	
2 think I have a decent memory.		2 referred to as CDO Fund in the UBS New York	
3 Q You send and received 10,000 e-mails over		3 litigation, right?	
4 what time period?		4 A I think that's right.	
5 A I mean, if you're talking about over a		5 Q And Mr. Dondero had authority to sign on	
6 four-year period, five-year period, thousands of		6 behalf of CDO Fund at this time?	
7 e-mails. I didn't remember this one.		7 A I suppose he did. It appears that he	
8 Q Did you read thousands of documents over		8 signed on behalf of that entity.	
9 that time period?		9 Q And also on behalf of CDO Hold Co and	
10 A Possibly.		10 SOHC, correct?	
11 Q So it's possible that you forgot you had		11 A Appears that he signed on behalf of all of	
12 read the ATE policy?		12 those entities, yes.	
13 A No. I am certain that the only part of		13 Q And CDO Hold Co and SOHC were both subs of	
14 the ATE policy I ever read was just the one page.		14 Highland Financial Partners, correct?	
15 Q Why? Why did you -- why did you refuse to		15 A They were both owned by Highland Financial	
16 read the policy?		16 Partners, yes.	
17 MS. SMITH: Objection to form.		17 Q Who negotiated this policy on behalf of	
18 A Refuse is not accurate.		18 CDO Opportunity Master Fund?	
19 BY MR. CLUBOK:		19 A I don't know.	
20 Q You obtained a copy of it, but you made a		20 Q Who negotiated this policy on behalf of	
21 point of not looking at it or opening the		21 Highland CDO Hold Co?	
22 document?		22 A I have no idea.	
23 MS. SMITH: Objection to form.		23 Q So who negotiated this policy on behalf of	
24 A That's not accurate, sir.		24 SOHC?	
25		25 A I don't know.	
	218		220
1 BY MR. CLUBOK:		1 Q You understood, though, that -- strike	
2 Q What's inaccurate about that statement?		2 that.	
3 A I don't ever remember consciously thinking		3 Was this the page you looked at on	
4 I better not look at this. I don't -- but I		4 Mr. Sevilla's computer to tell you that the -- who	
5 certainly know that I didn't look at it.		5 the insureds were?	
6 Q Well, let's open it up and take a look at		6 A I don't think so, no.	
7 it. You certainly have looked at the page -- the		7 Q So flip back to page 17. It says page 17	
8 last page of the legal liability insurance policy		8 of 16. Do you see that? And I guess they ended	
9 is the signature page. Do you see that?		9 the policy at 16 and then they added 17 and 18 on	
10 A I do.		10 top.	
11 Q And do you see that it was signed on		11 A Gosh.	
12 behalf of Sentinel Reinsurance by someone named		12 Q I don't know if that's --	
13 Andrew Dean, director?		13 A Yeah.	
14 A I see that, yes.		14 Q Or they added 17 and then they added a	
15 Q Do you know who Andrew Dean is?		15 signature page that's 16 but with signatures. Do	
16 A I don't.		16 you see that?	
17 Q Do you know who negotiated the policy on		17 A I do.	
18 behalf of Sentinel Reinsurance?		18 Q Maybe that's a Cayman convention. I don't	
19 A No, sir, I don't.		19 know. I haven't seen that before.	
20 Q Okay. Do you see there where it lists the		20 Is this schedule on what's marked as	
21 insureds under the policy?		21 page 17 of 16, or Bates label ending in 90, 91 of	
22 A I do.		22 Exhibit 56, is that the page that you looked at on	
23 Q And do you see it lists Highland CDO		23 Mr. Sevilla's computer?	
24 Opportunity Master Fund, LP?		24 A It might have been.	
25 A Yes.		25 Q Certainly -- did you know that the ATE	

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	221		223
1 policy was for \$100 million?		1 A The settlement proposal in April was	
2 A I don't think I did, no.		2 different than the ATE policy purchased in August.	
3 Q Well, that matches up exactly with the		3 Q I believe you said, in words or substance,	
4 settlement structure that you had proposed in		4 the transaction contemplated in April of 2017 was	
5 which HFP and CDO Fund would buy a \$100 million		5 entirely different than the purchased ATE policy	
6 ATE policy from Sentinel, right?		6 in August of 2017?	
7 MS. SMITH: Objection, form.		7 A What I'm --	
8 BY MR. CLUBOK:		8 Q Is that correct?	
9 Q Strike that. Let me ask it again.		9 A What I'm testifying is to, sir, the	
10 In Exhibit 47, you passed on a settlement		10 contemplated settlement process, which is what's	
11 proposal that contemplated HFP and CDO Fund buying		11 discussed in this document, is different than the	
12 a \$100 million ATE policy from Sentinel. Do you		12 ATE policy that was purchased in August of 2017.	
13 see that?		13 Q Okay. But part of that settlement process	
14 A Where are you, sir?		14 was the purchase of an ATE policy that was very	
15 Q Back to page 8.		15 close to what ultimately was purchased in August	
16 A Of which document?		16 of 2017, correct?	
17 Q 47.		17 MS. SMITH: Objection, form.	
18 A I see the page.		18 A Honestly, I'm seeing this document -- the	
19 Q And remember, Exhibit 47 was the		19 ATE policy for the first time.	
20 settlement analysis that was conducted in April of		20 BY MR. CLUBOK:	
21 2017 that you claimed was for an entirely separate		21 Q Okay. So you have -- but in your proposal	
22 transaction than the executed ATE policy, correct?		22 that was being considered in April of 2017, as	
23 MS. SMITH: Objection to form.		23 part of it, it was HFP and CDO Fund would buy a	
24 A Can you rephrase the question? I'm sorry,		24 \$100 million ATE policy from Sentinel, correct?	
25 I got lost in all of the advocacy of that one.		25 MS. SMITH: Objection, form.	
	222		224
1 BY MR. CLUBOK:		1 A The document states that HFP and CDO Fund	
2 Q There was work done in April of 2017		2 would buy a \$100 million ATE policy from Sentinel	
3 that's at least in part reflected by Exhibit 47,		3 as the first of what ultimately were seven steps	
4 regarding a potential settlement structure with		4 in a settlement process.	
5 UBS, correct?		5 BY MR. CLUBOK:	
6 A There was a potential settlement structure		6 Q Right. But the purchase of the policy	
7 with UBS contemplated in April of 2017.		7 would be from HFP and CDO Fund. Yes?	
8 Q And as part of that, there was a		8 A Yes.	
9 transaction that you've testified about today that		9 Q And it would be a \$100 million ATE policy	
10 was being considered, correct?		10 from Sentinel Reinsurance, right?	
11 A There is the consideration of purchasing		11 A From Sentinel, yes.	
12 an ATE policy.		12 Q And the premium would be all of the assets	
13 Q And you said, I'm paraphrasing, that the		13 in HFP and CDO Fund, correct?	
14 April proposed transaction or contemplated		14 A Right. That's what it says on the page.	
15 transaction was entirely different from what		15 Q Okay. And what actually happened is --	
16 actually happened when an ATE policy was purchased		16 pursuant to the legal liability insurance policy	
17 in August of 2017, correct?		17 that you asked for a copy of in October 25th,	
18 MS. SMITH: Objection, form.		18 2017, is that Sentinel Reinsurance issued a policy	
19 A Whatever my testimony was, it will speak		19 to SOHC -- sorry, to CDO Fund and two subsidiaries	
20 for itself.		20 of HFP, correct?	
21 BY MR. CLUBOK:		21 A Which page are you on, sir?	
22 Q Am I getting the gist of your testimony		22 MS. SMITH: Objection, form.	
23 correct, that you said the April proposed		23 BY MR. CLUBOK:	
24 transaction was entirely different from the actual		24 Q I'm on the schedule which is marked as	
25 consummated August transaction?		25 page 17 of 16, that you believe you had reviewed	

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<p>225</p> <p>1 on Mr. Sevilla's computer, and it's fair to say 2 that there was a \$100 million ATE policy purchased 3 by HFP and CDO Fund from Sentinel in August of 4 2017?</p> <p>5 MS. SMITH: Objection, form.</p> <p>6 A To clarify my earlier testimony, the only 7 thing I did was I looked at who the insureds were 8 on this page. That's all I cared about. I don't 9 even remember looking at the rest of the page.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q You knew that the insureds were HFP and 12 CDO Fund, correct?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 A I apparently had to confirm that the 15 insureds were Highland CDO Opportunity Master 16 Fund, LP, Highland CDO Holding Company and 17 Highland Special Opportunities Holding Company. 18 That's why I looked at this page.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Right. And that matches up with the 21 contemplation from your April document, that 22 shorthand, HFP/CDO fund would buy a \$100 million 23 ATE policy from Sentinel, correct?</p> <p>24 MS. SMITH: Objection, form.</p> <p>25 A I don't really know that it does, no.</p>	<p>227</p> <p>1 do you say that the transaction that was 2 contemplated in Step 1 of the UBS settlement 3 structure reflected in Exhibit 47 is totally 4 different than the actual ATE policy that was 5 purchased a couple months later? Is that your 6 testimony under oath, yes or no?</p> <p>7 MS. SMITH: Objection, form.</p> <p>8 A I can't give you that testimony one way or 9 another. I'm seeing that ATE policy for the first 10 time.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Okay. So as you sit here today, fair to 13 say that you can't say how closely the actual ATE 14 policy matches up with what was contemplated as 15 part of the proposed UBS settlement structure 16 reflected in Exhibit 47; is that fair?</p> <p>17 A I disagree with one of the premises of 18 your question, and I'm happy to explain.</p> <p>19 Q Yeah.</p> <p>20 A The April settlement proposal was a series 21 of steps, but they were all part of a single 22 proposal. I don't know that we can pull one of 23 them out and characterize it as something that 24 happened later or didn't happen later. It's a 25 single process with multiple steps.</p>
<p>226</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q You're sitting here -- now that you're 3 looking at these, you claim that the Step 1 4 HFP/CDO Fund buy a \$100 million ATE policy from 5 Sentinel, using all the assets in HFP and CDO Fund 6 doesn't match up with the actual purchase of a 7 \$100 million ATE policy from Sentinel as reflected 8 in Exhibit 56?</p> <p>9 MS. SMITH: Objection, form.</p> <p>10 A The documents speak for themselves. I'm 11 looking at one document I didn't even remember and 12 know that I've drafted and another document I've 13 never seen.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q Yeah. The documents do speak for 16 themselves. I want -- but I asked you for your 17 testimony earlier. And we have a record of what 18 you said.</p> <p>19 A Okay.</p> <p>20 Q And what you said about how separate these 21 transactions were. I'm not trying to quote the 22 exact words, but we've got pages of transcript 23 from earlier today about exactly what you said 24 under oath.</p> <p>25 And my question now is, as you sit here,</p>	<p>228</p> <p>1 Q Okay.</p> <p>2 MR. CLUBOK: I'm going to move to strike 3 as nonresponsive.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q I just want you to focus on my question 6 and please don't make points about things I'm not 7 asking you.</p> <p>8 Step 1 of the proposed settlement 9 structure that is reflected in Exhibit 47 is 10 substantially similar as what actually occurred 11 with the purchase of the ATE policy in August. 12 True or not true, or you can't -- you don't know?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 A I'm just seeing the ATE policy for the 15 first time today and frankly haven't even had a 16 chance to review the whole document. And I also 17 wouldn't pull one step out of the April proposal 18 and characterize it. So I don't believe I can 19 answer your question as asked.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q The reason you can't answer -- I am asking 22 you, if you could, to compare Step 1, which says: 23 HFP/CDO Fund buy a \$100 million ATE policy from 24 Sentinel, using a premium of all the assets in 25 HFP/CDO Fund to what actually happens in August.</p>

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<p>229</p> <p>1 And I want to know if that -- what was 2 contemplated as Step 1 is substantially the same 3 as what occurred in August, or if you believe it 4 was not substantially the same or if you don't 5 know because you don't know enough about the 6 details of what happened in August to make that 7 comparison? That's the only question I'm asking 8 you. Can you please answer that question?</p> <p>9 MS. SMITH: Objection, asked and answered.</p> <p>10 A I've given you my testimony, sir.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q My question is, was Step 1, as 13 contemplated in Exhibit 47, substantially the same 14 as what actually occurred in August, or do you not 15 know about the -- enough about the August 16 transaction to say one way or the other?</p> <p>17 A I've given you my --</p> <p>18 MS. SMITH: Objection, asked and answered.</p> <p>19 A I've given you my testimony, sir.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q My question is, as con -- I have a right 22 to ask this question. This is cross-examination. 23 And I'm going to ask the Court for more time with 24 you if we don't get an answer to this question. 25 It's very simple, without saying you've answered</p>	<p>231</p> <p>1 doing what you're doing, which is just claim 2 you've answered a question instead of just 3 answering the question, even if you believe I've 4 asked it twice. I hope your attorneys --</p> <p>5 MS. SMITH: Objection.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q -- tell you not to do that but we're going 8 to move on and we'll reserve that.</p> <p>9 A Let me give you a full answer. I disagree 10 with the premise of your question, sir, and I 11 cannot answer it as asked.</p> <p>12 Q In August of 2017, did HFP and CDO Fund 13 buy a \$100 million ATE policy from Sentinel using 14 all of the assets in HFP and CDO Fund?</p> <p>15 A I don't know.</p> <p>16 Q Did anyone ever tell you whether or not 17 that occurred?</p> <p>18 A I don't remember ever being told that.</p> <p>19 Q Did you know that the purchase of the 20 ATE policy in 2017 was made using assets of HFP 21 and CDO Fund?</p> <p>22 MS. SMITH: Objection, form.</p> <p>23 A I don't think I can really answer the 24 question as asked.</p> <p>25</p>
<p>230</p> <p>1 it. You just listen to my question and please try 2 to answer this question, regardless of whether you 3 believe you've answered this question or not.</p> <p>4 Step 1, that's identified on page 8 of the 5 presentation attached as part of Exhibit 47, 6 describes the purchase of a \$100 million ATE 7 policy from Sentinel by HFP and CDO Fund using as 8 the premium all of the assets in HFP and CDO Fund.</p> <p>9 And my question is, is that Step 1 the 10 same as what ultimately occurred substantially in 11 August of 2017, or do you believe it is not 12 substantially the same or do you not know enough 13 about the August transaction to answer that 14 particular question?</p> <p>15 A My response to the question was that I did 16 not believe I could answer the question as phrased 17 and I gave you the reasons I did not believe I 18 could answer the question as phrased. That was my 19 testimony. And that is still my testimony in 20 response to the same question, sir.</p> <p>21 MR. CLUBOK: Move to strike as 22 nonresponsive. We'll mark this document.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q We're going to call you back. It's not 25 acceptable to this court for any witness to keep</p>	<p>232</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Why not?</p> <p>3 A I didn't -- well, let me rephrase. I 4 didn't know what assets went over.</p> <p>5 Q Did you believe -- you knew that there was 6 an ATE policy that had been purchased, right?</p> <p>7 A Yes.</p> <p>8 Q And you knew who the insureds were, right?</p> <p>9 A Yes.</p> <p>10 Q And did you know that some or all of the 11 purchase was made using assets from the CDO Fund 12 and HFP?</p> <p>13 A I didn't know what the consideration was 14 for the policy.</p> <p>15 Q You knew, though, that as of April 2017, 16 as part of the settlement structure laid out, the 17 contemplation was that the entire consideration 18 for the ATE policy that was being considered as 19 part of that analysis would come from HFP and 20 CDO Fund, correct?</p> <p>21 MS. SMITH: Objection, form.</p> <p>22 A What I was aware of was in April 2017, it 23 was contemplated that Sentinel and HMLP can use 24 HFP and CDO Fund assets to generate cash to pay 25 UBS, Citi and outstanding legal bills.</p>

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<p>1 MR. CLUBOK: Move to strike as 2 nonresponsive.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q You knew that in April 2017 as part of the 5 settlement structure, Step 1 was the purchase of 6 an ATE policy for HFP and CDO Fund with the entire 7 consideration for that purchase coming from assets 8 in HFP and CDO Fund, correct?</p> <p>9 MS. SMITH: Objection, form.</p> <p>10 A I can characterize what's on the page, 11 which is HFP and CDO Fund would buy a \$100 million 12 ATE policy from Sentinel and the ATE premium, 13 apparently, was going to be all the assets in HFP 14 and CDO Fund.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q And there's no other consideration that 17 you're aware of that was being contemplated to pay 18 for the ATE policy that was part of the proposal 19 being discussed in April 2017, correct?</p> <p>20 A I don't remember --</p> <p>21 MS. SMITH: Objection, form.</p> <p>22 THE WITNESS: Sorry.</p> <p>23 A I don't remember the proposal from 24 April 2017, so I can't add or subtract from what's 25 on the page.</p>	<p>1 Okay. So please try hard to listen to my 2 questions the rest of the way and just answer the 3 questions I ask and not questions you decide to 4 answer. Okay?</p> <p>5 MS. SMITH: Andy, I think this might be a 6 good time for a break.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Do you need a break, Mr. Leventon?</p> <p>9 A I believe I do.</p> <p>10 Q Then we will take a break.</p> <p>11 THE VIDEOGRAPHER: We are off the record 12 at 4:07 p.m.</p> <p>13 (Recess taken from 4:07 p.m. CDT to 14 4:17 p.m. CDT)</p> <p>15 THE VIDEOGRAPHER: The time is 4:17 p.m. 16 We are back on the record.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Sir, did you ever send the insurance 19 policy to anybody?</p> <p>20 A I don't remember if I did or not.</p> <p>21 Q Who's Chris Dunn?</p> <p>22 A Chris was an accountant at Highland. I 23 think a junior fund accountant.</p> <p>24 Q I'm going to hand you what's been marked 25 as Exhibit 57. It's a cover e-mail from you</p>
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<p>1 BY MR. CLUBOK:</p> <p>2 Q My -- please listen to my question. As 3 you sit here today, you are not aware of any other 4 consideration that was being contemplated to pay 5 for the ATE policy that was being discussed in 6 April 2017 other than the assets from the HFP and 7 CDO Fund, correct?</p> <p>8 A Sitting here today, I don't remember one 9 way or another, sir.</p> <p>10 Q So you are not aware of any other 11 consideration that was being contemplated, 12 correct?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q As you sit here today?</p> <p>16 A As I sit here today, yes.</p> <p>17 Q Okay.</p> <p>18 A Was I ever aware, I don't know.</p> <p>19 Q I didn't ask if you were ever aware. I'm 20 going to ask you for the rest of this deposition, 21 in order to avoid me needing to seek more time, 22 that you please listen to the question I ask and 23 answer the question I ask and not one that you 24 make up. I didn't ask you if you ever were aware. 25 I said as you sit here today, are you aware.</p>	<p>1 attaching the UBS_ATE.PDF, dated October 26, 2017. 2 Do you see that?</p> <p>3 A Hold on one moment, please. I do see 4 that, yes.</p> <p>5 Q And this is an instance of you forwarding 6 the UBS after-the-event policy to Chris Dunn on 7 October 26, 2017, correct?</p> <p>8 A Yes.</p> <p>9 Q And you tell -- you don't -- you tell 10 Mr. Dunn: Please label all communications related 11 to this project as Privileged as all documents are 12 being drafted at the request of the Legal Team.</p> <p>13 Do you see that?</p> <p>14 A I do.</p> <p>15 Q What documents did you request Mr. Dunn 16 draft in connection with this ATE policy?</p> <p>17 MS. SMITH: Objection, form.</p> <p>18 A I never requested Mr. Dunn draft any 19 documents in connection with the ATE policy.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q What did you request Mr. Dunn do in 22 connection with the ATE policy?</p> <p>23 A I don't recall. I don't recall if I 24 requested him to do anything with it.</p> <p>25 Q Well, you talk about this project. You</p>

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1 refer to this project. Do you see?		1 you also understand that you have to	
2 A I do.		2 affirmatively -- do you believe when you're	
3 Q What's this project that you're referring		3 answering these questions, I just want to	
4 to?		4 understand what your -- your process when you're	
5 A I mean, I can speculate, but I don't		5 answering questions, do you believe you have an	
6 recall.		6 obligation not to omit intentionally information	
7 Q Give your best educated guess.		7 that is necessary to make the statements you say	
8 A Something having to do with the UBS		8 fully true?	
9 ATE policy.		9 A I mean, I answer the questions fully and	
10 Q You know nothing beyond that?		10 truthfully. That's what I can say, sir.	
11 A I don't.		11 Q Yeah. My question is in the -- when you	
12 Q Do you have any educated assumption about		12 do that, do you believe, as you sit here today,	
13 what this was beyond that it had something to do		13 that you have an obligation not to omit	
14 with the UBS ATE policy?		14 information that's necessary to make a statement	
15 A When you say this, you're talking about		15 that you have made fully true?	
16 the e-mail to Mr. Dunn?		16 MS. SMITH: Objection. You've already	
17 Q I'm talking about the project you		17 asked him that and he's answered. You're	
18 reference, as if he knows what you're talking		18 badgering him now.	
19 about when you send this policy to Mr. Dunn.		19 MR. CLUBOK: The record's going to show	
20 A I mean, I don't have a recollection, I		20 he's not answered this question and I think it's	
21 guess. I'm trying to figure out if I have an		21 an important question for the judge to know and I	
22 educated guess. I mean, there were a number of		22 think it's a perfectly fair --	
23 things that that could have referenced.		23 MS. SMITH: You're testifying now.	
24 Q Mr. Leventon, in the course of this		24 MR. CLUBOK: So are you. We're not	
25 deposition, you understand you have an obligation		25 supposed to -- you should limit yourself to	
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1 to affirmatively tell the truth, right?		1 objection to form and I should limit myself, so	
2 A Yes.		2 I'm going to ask my question again and I'm going	
3 Q Do you understand as part of that		3 to try not to take the bait of this argument. I	
4 obligation, you also can't intentionally omit		4 agree with you, it's inappropriate.	
5 information that is necessary to make a statement		5 BY MR. CLUBOK:	
6 you're saying the complete truth?		6 Q Mr. Leventon, when you are answering these	
7 MS. SMITH: Objection.		7 questions, do you believe you have an obligation	
8 BY MR. CLUBOK:		8 not to intentionally omit material information	
9 Q Do you have that understanding?		9 that's necessary to make one of your answers	
10 MS. SMITH: Objection.		10 completely truthful?	
11 A I'm going to testify fully and truthfully		11 A I have to fully and truthfully answer a	
12 to the best of my ability.		12 question, but I am not obligated to answer a	
13 BY MR. CLUBOK:		13 question I haven't been asked, is my understanding	
14 Q When you're answering questions in this		14 of the rules.	
15 deposition, do you understand that you have an		15 Q And do you believe you're allowed to	
16 obligation not to omit information that is		16 intentionally omit material information that might	
17 necessary to make statements you are making true?		17 be necessary to make an answer you give completely	
18 MS. SMITH: Objection. Mr. Clubok, you're		18 true?	
19 badgering him now.		19 MS. SMITH: Objection, form.	
20 A I'll accept my counsel's instructions on		20 BY MR. CLUBOK:	
21 how to conduct a deposition.		21 Q Yes or no?	
22 BY MR. CLUBOK:		22 A I'm not allowed to omit information that	
23 Q I'm asking your understanding of when		23 would make an answer to a question asked true, but	
24 you're trying to answer these questions, you know		24 I don't believe I have an obligation to educate	
25 that you're not supposed to affirmatively lie. Do		25 the questioning lawyer with respect to questions	

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<p style="text-align: right;">241</p> <p>1 they haven't asked.</p> <p>2 Q Okay. So with respect to this e-mail that 3 relates -- that references this project, do you 4 know anything else at all about what this project 5 may have been other than it relates somehow to the 6 UBS after-the-event policy that was purchased by 7 HFP and CDO Fund?</p> <p>8 A My answer previously was that I don't 9 recall, but that I was prepared to give my 10 educated guess.</p> <p>11 Q Okay. And that guess is?</p> <p>12 A It had something to do with the audits 13 being run by the accounting team, where you would 14 do some sort of risk analysis, potentially, in 15 order to determine if something goes into an audit 16 or not.</p> <p>17 Q When did you first become aware of 18 Sentinel Reinsurance?</p> <p>19 A I knew there was a reinsurance company in 20 the Cayman Islands in 2013 sometime, but I don't 21 recall if I knew the name or not.</p> <p>22 Q Did you know who owned Sentinel when you 23 were talking about potentially having CDO Fund and 24 HFP buy an ATE policy in April of 2017?</p> <p>25 A I mean, I knew it was somehow associated</p>	<p style="text-align: right;">243</p> <p>1 about it directly or was told by somebody that 2 that was his determination.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q I'm going to hand you what's been marked 5 as Exhibit 61. It's an e-mail chain, the top one 6 being an e-mail from Scott Ellington to you 7 copying JP Sevilla. Here's a color version if it 8 helps you. That's the official marked one, but 9 there's a color version if --</p> <p>10 A I'm going to put the marked version into 11 the pile and I'm going to look at the color 12 version.</p> <p>13 Q This is the last few pages of that.</p> <p>14 A Is this --</p> <p>15 MS. SMITH: Shannon, could I have a copy 16 of the color version also?</p> <p>17 MR. CLUBOK: I'm going to suggest that we 18 agree that we can swap in the color version for 19 Exhibit 61 if that's okay with you? Is that all 20 right, Ms. Smith?</p> <p>21 MS. SMITH: That works for me. Well, I 22 can't tell if it's the same.</p> <p>23 MR. CLUBOK: It's the same. We're 24 representing it's the same. We printed it out 25 with a color copier instead of the black-and-white</p>
<p style="text-align: right;">242</p> <p>1 with Mr. Dondero and Mr. Ellington, but I didn't 2 know who owned it.</p> <p>3 Q Did you know that those two had beneficial 4 economic interests in Sentinel?</p> <p>5 A I don't know -- I didn't know that then 6 and I don't believe I know that now.</p> <p>7 Q You were never provided any information 8 showing the beneficial ownership of Sentinel 9 during that time frame; is that what you're 10 testifying to?</p> <p>11 MS. SMITH: Objection, form.</p> <p>12 A I don't recall ever seeing the beneficial 13 ownership of Sentinel.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q Did you know that -- did you ever come to 16 believe that Sentinel was an affiliated investor?</p> <p>17 MS. SMITH: Objection, form.</p> <p>18 A It would have been whatever Mr. Surgent 19 and the compliance department determined and I 20 believe his determination is that it wasn't an 21 affiliated investor.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q Why?</p> <p>24 MS. SMITH: Objection, form.</p> <p>25 A Because I believe I either spoke to him</p>	<p style="text-align: right;">244</p> <p>1 version we had yesterday.</p> <p>2 MS. SMITH: Okay.</p> <p>3 MR. CLUBOK: So we'll work on that with 4 the court reporter to --</p> <p>5 MS. SMITH: So you're tossing the old -- 6 (Simultaneous discussion interrupted by 7 reporter.)</p> <p>8 MR. CLUBOK: We'll do that off the record 9 at the end to replace the version 61 that's in 10 black and white with a color version.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q And we've got a color version for 13 Mr. Leventon in front of him just for ease of use. 14 Do you see that there was a file that was 15 circulated amongst a number of people, with 16 Sentinel being presented as an affiliated investor 17 in Multi Strat. Do you see that?</p> <p>18 A I'm sorry, say that one more time, please.</p> <p>19 Q There is a document that was being 20 circulated in December of 2017, and on the first 21 page it identifies Sentinel (from Highland 22 CDO Fund) as an affiliated investor in what was 23 called Credit Opps and later became known as 24 Multi Strat.</p> <p>25 MS. SMITH: Objection, form.</p>

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<p>1 A I see on Bates number 020562 toward the 2 bottom, an e-mail from Mr. Taylor Colbert to Trey 3 Parker, copying a bunch of people, stating: As 4 discussed, please see the updated file with 5 Sentinel being presented as an affiliated 6 investor.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q And if you look at the attachment, the 9 first page, you can see where it identifies 10 Credit Opps Investors by NAV, Sentinel Re Holdings 11 is included, along with the others that are not 12 shaded to reflect being affiliated investors.</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q Do you see that?</p> <p>16 A Sorry, sir, give me a moment, please.</p> <p>17 This isn't completely straightforward.</p> <p>18 (Witness reviews document.)</p> <p>19 A Okay. I see that there's nothing on 20 nonaffiliated master for Sentinel Re Holdings, 21 Ltd.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q What?</p> <p>24 A On one, two, three, four -- fifth column 25 over, top of the first page on the attachment,</p>	<p>245</p> <p>1 Q Okay. So as I said, this document gets 2 forwarded apparently to Mr. Surgeon, who in turn 3 forwards it to Scott Ellington with a statement, 4 let's discuss. Do you see that?</p> <p>5 A I guess that's right.</p> <p>6 Q And --</p> <p>7 A Maybe.</p> <p>8 Q -- Mr. Ellington in turn forwards it to 9 you and JP Sevilla and says: See below and 10 attached and please call me tomorrow on this, from 11 his iPhone. Do you see that?</p> <p>12 A I do.</p> <p>13 Q Do you remember him calling you about 14 this?</p> <p>15 A No, I do not.</p> <p>16 MS. SMITH: Objection, form.</p> <p>17 MR. CLUBOK: What is the objection form on 18 that question?</p> <p>19 MS. SMITH: This says please call me 20 tomorrow on this and you asked do you remember if 21 he called you.</p> <p>22 MR. CLUBOK: Right. What is the form 23 objection?</p> <p>24 MS. SMITH: I thought you were asking it 25 backwards.</p>
<p>1 it -- there are percentages of non-affiliated 2 master and it does not have an entry for Sentinel.</p> <p>3 Q Right. So Sentinel is identified as 4 having some interest in the master and some 5 interest in the offshore, and like other entities, 6 for example, HCMLP and Mark Okada and Dugaboy, 7 they are listed as being affiliated as opposed to 8 non-affiliated in connection with Credit Opps, 9 correct?</p> <p>10 MS. SMITH: Objection, form.</p> <p>11 A I think that's probably fair, yes.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q And this document gets forwarded to 14 Thomas Surgeon who in turn forwards this to Scott 15 Ellington saying, let's discuss. Do you see that?</p> <p>16 A I don't mean to quibble with you, but 17 Mr. Surgeon appears to have been one of the 18 initial people copied on Mr. Colbert's e-mail at 19 5:50 p.m. on December 1 and then Mr. Surgeon 20 forwards that to Mr. Ellington.</p> <p>21 Q Okay. If you look down to Mr. Colbert's 22 original e-mail December 1st, 2017, Mr. Surgeon is 23 not copied, correct?</p> <p>24 A I'm looking at this for the first time and 25 that apparently is correct.</p>	<p>246</p> <p>1 MR. CLUBOK: Okay.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q Do you remember Mr. Ellington calling you 4 about this?</p> <p>5 A No.</p> <p>6 Q Do you remember ever discussing 7 Multi Strat's cash projections on or about 8 December of 2017?</p> <p>9 A No.</p> <p>10 Q Do you recall ever discussing whether 11 Sentinel was an affiliated investor in connection 12 with its investment of Multi Strat in December of 13 2017?</p> <p>14 A I don't specifically recall December 2017, 15 but I do know that at some point the compliance 16 department via Mr. Surgeon made the determination 17 that it was not an affiliated investor.</p> <p>18 Q Why do you know that?</p> <p>19 A I believe my testimony was I either -- I 20 don't remember if I spoke to Mr. Surgeon about it 21 directly or heard from somebody indirectly that 22 that had been Mr. Surgeon's determination.</p> <p>23 Q And do you know the basis that that 24 determination was supposedly made on?</p> <p>25 A I don't. It would be the purview of the</p>

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<p>249</p> <p>1 compliance department to make those calls.</p> <p>2 Q Do you see on the attachment where it says 3 Sentinel (from Highland CDO Fund)? Do you see 4 that?</p> <p>5 A Yes.</p> <p>6 Q And fair to say that the interest in 7 Sentinel had been owned by CDO Fund prior to the 8 purchase of the ATE policy?</p> <p>9 A I'm sorry, can you say that one more time, 10 please?</p> <p>11 Q Yeah. The interest that's referenced here 12 from Sentinel had been an interest that was owned 13 by the Highland CDO Fund until the purchase of the 14 ATE policy in August of 2017?</p> <p>15 A I don't actually know what assets were 16 involved in that ATE policy, but it would -- it 17 would be a fair assumption.</p> <p>18 Q You certainly know that there was assets 19 in Sentinel that were being held by CDO Fund when 20 you were doing your April 2017 analysis, correct?</p> <p>21 A Say that one more time, please.</p> <p>22 Q You knew that in April of 2017, when you 23 were doing the analysis about a transaction that 24 included the purchase of an ATE policy from 25 Sentinel, that at that time CDO Fund had an</p>	<p>251</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q So in April of 2017, you know that 3 CDO Fund had ownership interest in the entity that 4 was then called Credit Opps that later became 5 known as Multi Strat, correct?</p> <p>6 A I certainly had this schedule. I don't 7 remember focusing on it particularly, but I know I 8 had it.</p> <p>9 QOkay. And you know that by the end of the 10 year, CDO Funds' interest in Credit 11 Opportunities/Multi Strat came to be owned by 12 Sentinel pursuant to this schedule attached to 13 Exhibit 61, correct?</p> <p>14 MS. SMITH: Objection, form.</p> <p>15 A Hold on. This is the -- that was in the 16 attachment that was sent to me.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q So that's a yes?</p> <p>19 A I'm not meaning to quibble about -- I know 20 I received these documents. I have no dispute 21 about that. I just don't have a recollection of 22 looking at them, comparing them and noticing that 23 particular point, as we're doing today.</p> <p>24 QOkay. But you were provided information, 25 whether you studied it or not, by the end of 2017</p>
<p>250</p> <p>1 interest in Credit Opportunities which later 2 became known as Multi Strat, correct?</p> <p>3 A I saw the e-mail that showed that schedule 4 of assets, and I think Multi Strat is on there, 5 but I don't have an independent recollection of 6 that ownership.</p> <p>7 Q Right. But Exhibit 67 --</p> <p>8 A Hold on one second, please. Hold on. I 9 don't have --</p> <p>10 Q Exhibit 67 is a one-page document.</p> <p>11 A Sorry, I don't have Exhibit 67 in front of 12 me for some reason.</p> <p>13 Q Well, Exhibit 67 is a one-page document 14 that was Appendix 1 --</p> <p>15 A Sorry, it got attached. I found it.</p> <p>16 Q If you look at the second page of 17 Exhibit 67, these were assets that were being held 18 by CDO Fund and HFP that had been identified to 19 you in April of 2017 when it was contemplated that 20 these assets could be used to purchase an 21 ATE policy from Sentinel, correct?</p> <p>22 MS. SMITH: Objection, form.</p> <p>23 A Yes. And as I told you after looking at 24 this document, it appears that the Highland Credit 25 Opportunities CDO Ltd./LP units are on here.</p>	<p>252</p> <p>1 that showed that the interest CDO Fund had had in 2 Credit Opportunities/Multi Strat from earlier in 3 the year had now come to be owned by Sentinel, 4 correct?</p> <p>5 A That's what this line says for the 6 offshore feeder.</p> <p>7 Q And that's a line in a document that was 8 provided to you by the end of the year 2017, 9 correct?</p> <p>10 A I mean, now that I'm comparing these for 11 the first time, I mean, this is a -- they don't 12 match. They don't match.</p> <p>13 Q Right. The dollar amounts don't match 14 exactly.</p> <p>15 A No, the entities don't match.</p> <p>16 Q Oh, the entities don't match.</p> <p>17 A No. The entities don't match.</p> <p>18 Q Oh. Are you claiming that the interest 19 that Credit Opps/Multi Strat had in Sentinel did 20 not come from CDO Fund?</p> <p>21 MS. SMITH: Objection, form.</p> <p>22 A I'm not saying that, sir. I'm making an 23 observation of fact that Highland Credit 24 Opportunities Fund, Ltd., on Exhibit -- 25 whatever -- 61, is a different entity than</p>

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<p style="text-align: right;">253</p> <p>1 Highland Credit Opportunities CDO, Ltd., which was 2 colloquially known as the MVCDO and was a wholly 3 owned subsidiary of the master fund and they don't 4 match.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Sir --</p> <p>7 A I'm not making a dispute about 8 transactions. I'm pointing out -- I mean as you 9 pointed out to me that there was a math error, I'm 10 pointing out to you there's an error.</p> <p>11 Q Well, there may or may not be an error in 12 the names used, but fair to say that you knew in 13 April of 2017 that CDO Fund had roughly 14 \$24 million of LP units in what was then known as 15 Credit Strategies, correct?</p> <p>16 A In some level of Credit Strategies, but 17 they're not matching up, correct.</p> <p>18 Q Okay. And you also received 19 information -- you also -- strike that -- knew 20 that there was a plan being proposed in April that 21 would have had an ATE policy with a \$100 million 22 face value purchased by CDO Fund and HFP for all 23 of the assets in those two funds from Sentinel, 24 correct?</p> <p>25 MS. SMITH: Objection, form.</p>	<p style="text-align: right;">255</p> <p>1 owned an interest in Multi Strat but that it had 2 been transferred to Sentinel?</p> <p>3 MS. SMITH: Objection to form.</p> <p>4 A We discussed that they had at one point 5 owned an interest in Multi Strat, but I don't -- 6 there was a problem with that interest.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q What did you say specifically -- well, 9 first of all, who's the we in that sentence?</p> <p>10 A Sorry, if you'll read my testimony back.</p> <p>11 Q You said we discussed.</p> <p>12 A Mr. -- oh, gosh. It was either me and 13 Mr. Demo or me and Mr. Seery. I think it was me 14 and Mr. Demo.</p> <p>15 Q You and Mr. Demo discussed what on this 16 subject?</p> <p>17 A That there had been -- that there had been 18 an interest in the Credit Opportunities fund 19 structure or fund entities that had been owned by 20 CDO Fund.</p> <p>21 Q And did you ever in any way, to Mr. Demo 22 or Mr. Seery or any other lawyer for the debtor or 23 independent director, convey that that interest 24 that CDO Fund had had in Multi Strat was 25 transferred to Sentinel?</p>
<p style="text-align: right;">254</p> <p>1 A I was aware that what was in that 2 presentation is what was in the presentation, that 3 it was a \$100 million ATE policy, I believe, in 4 exchange for all the assets. Whatever it says 5 there is the answer.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q And then you were advised at the end of 8 December -- strike that.</p> <p>9 You were advised at the end of 2017 that 10 Sentinel (from Highland CDO Fund) had some 11 interest in one of the Credit Opportunities funds, 12 correct?</p> <p>13 A I was advised that Sentinel had -- well, I 14 don't know advised. I was sent a document that 15 included a lot of information, but amongst it 16 included the line that there was 28 million in 17 offshore NAV that was transferred to Sentinel from 18 Highland CDO Fund.</p> <p>19 Q Okay. And did you ever follow up on that 20 issue with anyone at any time after that?</p> <p>21 A I don't recall if I did, and the 22 determination as to what was or wasn't an 23 affiliate was not my decision or purview.</p> <p>24 Q Did you ever tell Mr. Seery or anyone else 25 affiliated with the debtor, that CDO Fund had once</p>	<p style="text-align: right;">256</p> <p>1 A Yes.</p> <p>2 Q When did you tell them that?</p> <p>3 A Mr. Surgent was at all times aware of 4 that. He had been intimately involved in the 5 transaction and he was deputy general counsel for 6 the debtor and senior to me in the legal team. I 7 technically reported to Mr. Ellington, but 8 Mr. Surgent often would task me with things as 9 well and I had to follow his instructions.</p> <p>10 Q Sorry, let's set aside Mr. Surgent for the 11 moment. Did you ever tell Mr. Demo or any other 12 lawyer at the Pachulski law firm, that the 13 interest that CDO Fund had had in Multi Strat was 14 transferred to Sentinel?</p> <p>15 A I believe what I told Mr. Demo was that I 16 wasn't sure what happened to that interest.</p> <p>17 Q But, in fact, you knew that that interest 18 had been transferred to Sentinel pursuant to this 19 document that we've just reviewed, correct?</p> <p>20 MS. SMITH: Objection, form.</p> <p>21 A Actually based on the discrepancy I just 22 showed you, which actually was something I 23 originally became aware of back in August of 2020 24 or maybe September, I don't actually know that 25 that was an effective transfer.</p>

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1 BY MR. CLUBOK:		1 you're saying?	
2 Q You don't know if there actually has been		2 A It may or may not.	
3 an effective transfer from CDO Fund to Sentinel;		3 Q Okay.	
4 is that correct?		4 A But it -- that interest may not exist, is	
5 A Well, it -- the problem is --		5 another possibility.	
6 Q I just want an answer to my question. As		6 Q Okay. And then -- and you identified this	
7 you sit here today, you don't know if there		7 issue at some point?	
8 actually has been an effective transfer of CDO's		8 A Yes, absolutely.	
9 interest in Multi Strat to Sentinel, correct?		9 Q While you were still working for the	
10 A The answer is I don't know and I also		10 debtor?	
11 think that that question assumes certain facts		11 A Yes.	
12 that I can't confirm or agree with.		12 Q And did you fully describe this issue to	
13 Q Like what?		13 Mr. Demo or another lawyer at the Pachulski firm?	
14 A Like the problem I ran into was if you		14 MS. SMITH: Objection, form.	
15 have an accounting entry that shows that a fund		15 A I discussed this at length with Mr. Demo.	
16 owns -- let's just round it -- we'll call it		16 BY MR. CLUBOK:	
17 24 million; is that fair? We'll just call the		17 Q And did you explain to Mr. Demo that there	
18 CDO Fund interest that --		18 had been -- when you say discussed it at length,	
19 Q For purpose of this discussion you can		19 did you ever, in words or substance, say something	
20 call it 24 million for ease of --		20 that reflected that there was some effort, whether	
21 A Okay.		21 or not it had been successful, to transfer	
22 Q Whether it's 24 or 28.		22 interest in Credit Strat from Highland CDO Fund to	
23 A Twenty-four or 28, I'm not --		23 Sentinel?	
24 (Simultaneous discussion interrupted by		24 A We discussed --	
25 reporter.)		25 Q That's a yes-or-no question.	
	258		260
1 A So if you have one accounting sheet that		1 A The issue of Sentinel did not come up in	
2 shows one asset and one accounting sheet that		2 our conversations.	
3 shows that after it was transferred it's a		3 Q So when you claim that you discussed at	
4 completely different asset, then you have a		4 length this potential problem with identifying	
5 problem. Which then raises the question, did you		5 whether CDO Fund, in fact, owned an interest in	
6 own what you think you owned and did you actually		6 Multi Strat, you never thought to raise the issue	
7 transfer something you owned? I mean, it's kind		7 of whether or not CDO Fund had effectuated a	
8 of like -- it's like any other security that would		8 proper transfer of that interest if it had one, to	
9 be issued. Like if you own shares of UBS		9 Sentinel, correct?	
10 Securities USA, LLC, and then you sell them and		10 A I got stuck in an earlier stage in the	
11 someone on their balance sheet reflects US AG		11 analysis and so Sentinel didn't come up.	
12 stock, then what just happened?		12 Q You never raised it affirmatively,	
13 BY MR. CLUBOK:		13 correct?	
14 Q I see. And, in fact, for example, you		14 A We never got to that point in the inquiry.	
15 know that -- you -- based on the analysis you did,		15 So no.	
16 you determined that CDO Fund still has ownership		16 Q You never mentioned that in order to	
17 of an entity that's been loosely called		17 figure out what interest, if any, CDO Fund had in	
18 Greenbriar, perhaps because of a faulty		18 Multi Strat, you might need to look at Sentinel's	
19 transaction?		19 books, correct?	
20 A That is a different situation.		20 A No, I wouldn't care what Sentinel's books	
21 Q Okay. With respect to CDO Fund and		21 said.	
22 Multi Strat, you believe that CDO Fund may still		22 Q You never mentioned that in order to	
23 retain whatever interest it had in Multi Strat		23 figure out what interest, if any, CDO Fund had in	
24 that you were aware of in April of 2017 because of		24 Multi Strat, you might need to look at what	
25 perhaps an incorrect book entry; is that what		25 Highland's books reflected in terms of transfers	

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1 from Highland CDO Fund to Sentinel, correct?		1 Q And you knew that there was a schedule	
2 A We didn't say Sentinel in particular, but		2 that showed Sentinel having interest in	
3 we did talk about any transfers, yes.		3 Multi Strat (from Highland CDO Fund), correct?	
4 Q But you definitely didn't say Sentinel,		4 A In December I think that's fair -- sorry,	
5 which was the transfer that you were aware at		5 December 2017. I think that's fair.	
6 least had been contemplated and at least in one		6 Q And you even -- when you were tasked with	
7 place reflected as having had occurred?		7 helping trace the assets of CDO Fund and HFP, you	
8 MS. SMITH: Objection, form.		8 even talked to Mr. Ellington, in words or	
9 BY MR. CLUBOK:		9 substance, about whether or not you should mention	
10 Q I'll break that up into two questions.		10 Sentinel, correct?	
11 You knew that it was contemplated that		11 A Correct.	
12 there would be a transfer of CDO Fund's interest		12 Q And you never did once mention Sentinel to	
13 in Credit Strat to Sentinel, but you never		13 anyone at the Pachulski law firm in the course of	
14 affirmatively raised that with Mr. Demo or any		14 doing the task you were given with respect to	
15 other lawyer at Pachulski, correct?		15 tracing the assets of CDO Fund and SOHC, correct?	
16 MS. SMITH: Objection, form.		16 Correct?	
17 A I don't remember being aware of that at		17 A It was not relevant to the task, so, no, I	
18 the time and it wasn't pertinent to the task that		18 didn't.	
19 I was working on, which was the asset trade.		19 Q I'm going to hand you what's been marked	
20 BY MR. CLUBOK:		20 as Deposition Exhibit No. 2. I don't want you to	
21 Q Sir, you knew that it had been		21 spend time reading it. I just want to -- in fact,	
22 contemplated based on the work you did in April of		22 before I hand it to you, I just want to ask you.	
23 2017, that to purchase an ATE policy, CDO Fund		23 Did you know there was a purchase agreement that	
24 might use as part of the consideration whatever		24 was executed on or about the same time as the	
25 interest it had in Multi Strat, correct?		25 ATE policy was executed?	
	262		264
1 A I can affirmatively state that in August		1 A I think I knew that there was such an	
2 of 2020, I was not thinking about an e-mail from		2 agreement, but I've never seen it.	
3 April of 2017.		3 Q You've never seen it before today and that	
4 MR. CLUBOK: Move to strike as		4 you're sure about, right?	
5 nonresponsive.		5 A Yes.	
6 BY MR. CLUBOK:		6 Q Did you ever ask for a copy of it?	
7 Q I didn't ask you that. I just said you		7 A Not that I'm aware of.	
8 knew based on the work you had done in April 2017,		8 Q Were you ever sent a copy of it?	
9 that CDO Fund had been contemplating using its		9 A Not that I'm aware of.	
10 interest in Multi Strat to partially fund the		10 Q Okay. You knew -- you specifically were	
11 purchase of an ATE policy, correct?		11 involved with authorizing payments from Sentinel	
12 A Sir, it was one of many assets on a		12 for legal fees associated with the UBS litigation	
13 schedule, and I just don't remember thinking about		13 in New York, correct?	
14 that asset in -- I don't remember thinking of that		14 A Say that one more time, please.	
15 asset from that schedule in April of 2017 back		15 Q You were involved with authorizing	
16 in -- whenever we were, August of 2020.		16 payments to be made from Sentinel for legal fees	
17 Q You knew it was contemplated that CDO Fund		17 associated with the UBS litigation in New York,	
18 would transfer all of its assets to Sentinel as		18 correct?	
19 part of the consideration for what was then		19 A Yes.	
20 contemplated to be an ATE policy. You knew that		20 Q In fact, you directed Sentinel to make	
21 for sure, right?		21 certain payments to lawyers and vendors associated	
22 A Apparently in April 2017, I did, yes.		22 with the legal work done in New York against UBS,	
23 Q And you knew that there had been an		23 correct?	
24 ATE policy purchased, correct?		24 A I don't want to say I directed them to.	
25 A Yes.		25 I'll say we requested that they do so.	

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1 Q And in every single instance, they 2 followed your request for payment of legal fees 3 associated with the New York litigation against 4 UBS, correct?		1 a t at H i g l a n d e l l a u g h o o k .	
5 A I can't say -- 6 MS. SMITH: Objection to form.		2 Q Did you ever request that anyone consider 3 whether or not a ATE policy that was related to a 4 judgment would be considered to be an asset of the 5 beneficiary of that policy? Let me ask that 6 again.	
7 A I can't say every single time, but I think 8 pretty much every time, if not every.		7 If there's an ATE policy -- and by the 8 way, that after the event, what was the event 9 that's referenced in the ATE policy?	
9 BY MR. CLUBOK:		10 A I haven't read the policy, sir.	
10 Q You can't, as you sit here today, identify 11 a single time where they did not follow your 12 directions in terms of paying legal fees or costs 13 associated with the litigation pending in 14 New York, correct?		11 Q Did you have -- they told you that legal 12 fees were part of the policy. Did they tell you 13 that a settlement would be an event that would be 14 impacted by the policy?	
15 MS. SMITH: Objection, form.		15 A Well, those are two slightly different 16 questions. Can we break them into two, please?	
16 A Sitting here today, I'm not aware of any 17 time that they refused to pay requested legal 18 fees.		17 Q Did anyone, in words or substance, tell 18 you if there was a settlement in the UBS 19 litigation, that a Sentinel policy could be used 20 to pay the settlement?	
19 MR. CLUBOK: What was your form objection?		21 A I believe that was my understanding, yes.	
20 MS. SMITH: You said direction and he said 21 he didn't direct. He said he requested.		22 Q And who gave you that understanding?	
22 BY MR. CLUBOK:		23 A I don't recall exactly, but it would have 24 been probably Mr. Ellington or Mr. Sevilla.	
23 Q In every single time that you requested 24 Sentinel pay any legal fees or costs associated 25 with the New York litigation, they abided by that		25 Q When?	
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1 request, as best as you recall sitting here today, 2 correct?		1 A I don't know.	
3 A Again, I don't remember every single 4 instance, but I don't remember any time that they 5 didn't do it.		2 Q Before the bankruptcy?	
6 Q Who told you that you could make requests 7 directly to Sentinel and expect that they would 8 carry them out with respect to legal fees 9 associated with the New York litigation?		3 A Yes.	
10 A It was my understanding that that was 11 something contemplated in the ATE policy, was that 12 Sentinel would pay legal invoices.		4 Q And at any point during the bankruptcy, 5 did you ever tell the independent directors or any 6 of the lawyers at the Pachulski firm that there 7 was this source of funds available to help settle 8 the litigation between UBS and the defendants in 9 the New York litigation?	
13 Q How did you know that if you never saw the 14 ATE policy?		10 A I don't know that I ever spoke to the 11 Pachulski firm about settlement of the New York 12 litigation.	
15 A I don't remember who told me, but somebody 16 did.		13 Q Did you ever volunteer that there was an 14 insurance policy available that could be used to 15 satisfy the judgment in the New York litigation?	
17 Q Who?		16 A I don't believe I ever spoke to Pachulski 17 about satisfaction of the judgment in New York or 18 settlement of the New York litigation.	
18 A I don't remember. It would have been 19 Mr. Sevilla or Mr. DiOrio, most likely.		19 Q So is that a no to my question?	
20 Q Did they tell you anything else about the 21 policy, other than they would pay all legal fees 22 associated with the New York litigation?		20 A That's right.	
23 A Maybe they told me other things, but this 24 particular subject would have come up because I 25 was the person in charge of processing legal fees		21 Q And you understood also from Mr. Sevilla 22 or Mr. Ellington that the after-the-event policy 23 could be used to satisfy a judgment in addition to 24 satisfying settlement or legal fees in connection 25 with the New York litigation, correct?	

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1 A I don't know that that's something we ever 2 discussed, but it would be logical. But I don't 3 recall ever discussing that point.		1 possibly be used to help satisfy the billion 2 dollar judgment?	
4 Q You never suggested, in words or 5 substance, that either the independent directors 6 or the Pachulski lawyers should look into whether 7 the Sentinel after-the-event policy could be used 8 to help satisfy the judgment that was entered 9 against CDO Fund and SOHC, correct?		3 A That question assumes -- I don't want to 4 make an assumes facts not in evidence objection 5 for myself, but that's what I'm saying. It 6 assumes things that didn't happen and I told you 7 the thing that didn't happen.	
10 A We never discussed settlement or 11 satisfaction of a judgment against those two 12 entities, whether the insurance policy or from any 13 other source of funds.		8 Q Yeah, I understand you want to tell me 9 that you never discussed anything about the 10 judgment, but I'm asking you a narrower question. 11 And it's very simple and you've spent -- wasted 12 five minutes and I'm going to add to my time at 13 least, and I just want to know.	
14 Q So that's a yes to my question, correct?		14 Fair to say that you never suggested, in 15 words or substance, to the directors or to the 16 Pachulski lawyers, that they should look into 17 whether the Sentinel ATE policy could be used to 18 satisfy the judgment that UBS had obtained against 19 CDO Fund and SOHC, correct?	
15 MS. SMITH: Objection, form.		20 A And my --	
16 BY MR. CLUBOK:		21 MS. SMITH: Objection, form.	
17 Q I would just like you to try to answer my 18 question. You gave me a broader answer, which is 19 interesting, but I'm not going to ask you to do 20 that and I am going to ask for my time if you 21 don't just -- make me ask these questions again. 22 So please answer the question I asked.		22 A And my answer is that assumes that I spoke 23 to the Pachulski firm or the independent directors 24 about satisfaction of the judgment or 25 settlement --	
23 MS. SMITH: Andy, the questions are so 24 long and they're multiple declarative sentences, 25 followed by comma, correct. That's the --			
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1 MR. CLUBOK: Okay. I'm going to ask --		1 BY MR. CLUBOK:	
2 MS. SMITH: It gets confusing.		2 Q It doesn't --	
3 MR. CLUBOK: You didn't even object on 4 form.		3 A -- which it didn't.	
5 MS. SMITH: Objection, form.		4 Q It doesn't assume that at all. I never 5 assumed that. In fact, I assumed you didn't. It 6 assumes the opposite. So I'm not asking you to 7 quibble with me about what supposedly is assumed 8 or not. I just want you to answer a question.	
6 MR. CLUBOK: It's too late after I asked 7 the question. So with no form objection, I ask 8 the following question and I'm going to ask 9 Mr. Leventon to answer this question.		9 My question is, you never volunteered to 10 the independent directors or to any lawyer at the 11 Pachulski firm that they should look into whether 12 or not the Sentinel ATE policy could be used to 13 satisfy the billion dollar judgment that had been 14 discussed during the course of the bankruptcy, 15 correct?	
10 A Okay.		16 A That was never a conversation that we had.	
11 BY MR. CLUBOK:		17 Q You certainly discussed with others at 18 Highland during the bankruptcy, the possibility of 19 settling or satisfying the judgment in the 20 New York litigation, correct?	
12 Q Isn't it true that you never suggested, in 13 words or substance, to either the independent 14 directors or any of the Pachulski lawyers that 15 they should look into whether the Sentinel 16 ATE policy could be used to help satisfy the 17 judgment that had been entered against CDO Fund 18 and SOHC?		21 MS. SMITH: Objection to form.	
19 A My answer is I disagree with the premise 20 of the question. I can explain why. It's the 21 explanation I just gave.		22 A I don't know that I did.	
22 Q I don't want you to explain why. I want 23 to say, did you ever suggest, in words or 24 substance, to either the directors or the 25 Pachulski lawyers that the ATE policy could		23 BY MR. CLUBOK:	
		24 Q Well --	
		25 A I thought that action was stayed.	

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1 Q You -- did you ever communicate with		1 chart is clearly after the judgment because it	
2 anyone about the possibility that the ATE policy		2 refers to the Phase 1 decision, correct?	
3 could be used to satisfy the judgment that had		3 A Well, it -- it refers to the -- yes, the	
4 been entered in the New York litigation after the		4 Phase 1 decision from November.	
5 bankruptcy?		5 Q Right. And that's this -- the decision	
6 A I don't know if I did or not. I don't		6 that led to the so-called billion dollar judgment,	
7 remember.		7 correct?	
8 Q In fact, you specifically engaged in		8 A That's correct.	
9 analysis for Sentinel's auditors about the		9 MS. SMITH: Objection, form.	
10 potential impact of the judgment in the New York		10 BY MR. CLUBOK:	
11 litigation on the ATE policy, didn't you?		11 Q And there's a number of expected payouts	
12 A I believe I spoke to Beecher Carlson at		12 from Sentinel as a result of that judgment. Do	
13 some point about the impact of the judgment on the		13 you see that?	
14 policy.		14 A I see Mr. Kemp's chart, yes.	
15 Q And you never told the independent		15 Q And it appears that this -- he sends you	
16 directors that you were having those discussions,		16 this chart and he asked you if the actuarial	
17 correct?		17 identification of lightly -- likely outcomes are	
18 A It wouldn't have come up ever, so, no, we		18 reasonable. Do you see that?	
19 never had those conversations.		19 A Yes.	
20 Q And you never told the Pachulski lawyers		20 Q And they've got one possibility of	
21 that you were having discussions with the auditors		21 settlement where the Sentinel -- and this is all	
22 for the Sentinel policy about the potential impact		22 expected payouts by Sentinel that are being	
23 of the judgment on the policy, correct?		23 assessed, correct?	
24 A It would never have come up with the		24 MS. SMITH: Objection, form.	
25 Pachulski lawyers, so, no, we didn't have those		25 A I believe that's right, yes.	
1 conversations.	274		276
2 Q In fact, you specifically analyzed		1 MR. CLUBOK: What's the form objection to	
3 different outcomes and assigned percentages to		2 that question?	
4 settlement and to other scenarios to try to		3 MS. SMITH: It doesn't say that they're	
5 calculate the potential liability for Sentinel in		4 the expected payouts for Sentinel.	
6 connection with the New York litigation; isn't		5 MR. CLUBOK: That's why I asked the	
7 that true?		6 question. But in any event.	
8 A I don't recall that.		7 BY MR. CLUBOK:	
9 Q I'm going to hand you what we're going to		8 Q This was a question for you to affirm	
10 mark as Exhibit 68.		9 whether they were reasonable estimates for	
11 (Deposition Exhibit 68 marked for		10 potential payouts by Sentinel because of its	
12 identification.)		11 ATE policy. Is that what you understood this to	
13 BY MR. CLUBOK:		12 be?	
14 Q Exhibit 68 is a two-page document		13 A I think that's right, yes.	
15 Bates-labeled 95 and 96. This is a document		14 Q And one possibility that you agreed was a	
16 that's an e-mail chain beginning at the very first		15 50 percent probability is that the plaintiff, that	
17 e-mail, May 24th, 2019, from Lawrence Kemp to you		16 is UBS, would pursue recovery exclusively through	
18 and then it picks up June 16, 2020, from Lawrence		17 bankruptcy proceedings. Do you see that?	
19 Kemp to you and you respond. Do you see that?		18 A I see where it says that, yes.	
20 A I do.		19 Q And if that were to happen, you told them	
21 Q And here it looks like there is a request		20 to expect that Sentinel would pay zero. Do you	
22 for an update on what happened with respect to the		21 see that?	
23 New York litigation, correct?		22 A I didn't tell him to expect that. This is	
24 A Yes.		23 the assumptions he's giving me.	
25 Q And this analysis that's reflected in the		24 Q You agreed that it was a reasonable	
		25 assumption that there was a 50 percent chance that	

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1 UBS would pursue its recovery against the insureds 2 under the ATE policy exclusively through the 3 bankruptcy proceedings and therefore there would 4 be zero paid out from the ATE policy, correct?		1 Q Right. So you at one point had a bunch of 2 settlement -- sorry. At one point you had a bunch 3 of damages outcomes that included scenarios 4 involving winning on hedging, but by the time the 5 trial was done, you knew that that was not going 6 to happen, correct?	
5 A I didn't -- I agreed with Mr. Kemp's 6 analysis -- or I didn't change it.		7 A I know the scenarios incorporated hedging. 8 I would have to go back and look at what they 9 said. But certainly by the end of trial, we would 10 have -- excuse me. Certainly by the end of the 11 trial, we would have known that the Court -- the 12 trial court had ruled against us on hedging.	
7 Q You agreed that it was a reasonable 8 assumption?		13 Q And the -- anyway, back to this. Did you 14 ever -- when you're responding to Mr. Kemp, did 15 you inform Mr. Seery in any way, directly or 16 indirectly, through the chain of command about 17 this analysis and the potential payout from the 18 ATE policy with respect to the New York 19 litigation?	
9 A Yes.		20 A Mr. Surgent would have been aware of the 21 potential payout, but other than that, I don't 22 know if there's anyone else. And Mr. Ellington 23 would have been, but I mean that's my whole -- 24 that's my chain of command.	
10 Q And you also agreed that if the Phase 1 11 decision were affirmed, then the expected payout 12 would be \$91 million from the ATE policy, correct?		25 Q Did you inform Mr. Surgent about this	
13 A That's what that says, yes.			
14 Q And you said there was a reasonable 15 assumption that there would only be a 20 percent 16 chance of that, correct?			
17 A That's not exactly right. Because it's 18 total probabilities, so it's not isolating just 19 the probability of success on the appeal.			
20 Q But the total -- okay. I see. You 21 thought there was a 50 percent chance that we 22 wouldn't even -- that UBS wouldn't even bother to 23 continue the litigation but instead would settle 24 the case or pursue recovery just through the 25 bankruptcy proceeding?	278		
1 A I mean, in terms of the 20 percent, the 2 20 percent is in terms of the total outcome. I'm 3 not saying that the appeal is only 20 percent. 4 Like that UBS has an 80 percent chance of losing 5 its appeal, that's not what I thought this said.		1 analysis you were doing in June of 2020?	280
6 Q Okay. Because at the time you thought it 7 was nearly certain -- or certainly extremely 8 likely that UBS's judgment would be affirmed if it 9 was even appealed, correct?		2 A No, but he was aware of the ATE policy and 3 what it covered.	
10 A Honestly, I don't remember.		4 Q Again, then, it's not the question at all 5 that I asked you. You've just volunteered -- 6 somehow you find it okay to volunteer information 7 about Mr. Surgent, but you never volunteered 8 anything about the ATE policy in the whole time 9 you worked for Mr. Seery.	
11 Q Well, you --		10 MS. SMITH: Objection, badgering. 11 BY MR. CLUBOK:	
12 A I still remember that we -- we thought we 13 had really good textual arguments on the synthetic 14 warehouse.		12 Q My question to you, without -- and I'm 13 asking you not to volunteer information that's not 14 responsive to this question, is did you ever 15 inform Mr. Seery in any way directly or indirectly 16 through the chain of the command about the 17 analysis and potential payout under the ATE policy 18 that's reflected in Exhibit 68?	
15 Q But you actually believed from day one 16 that UBS was likely to win on liability, right?		19 A I don't believe that I ever discussed 20 Exhibit 68 with Mr. Seery.	
17 A Which is a wholly separate issue, yes.		21 MS. SMITH: Andy, is now a good time for a 22 break?	
18 Q And you had done analysis -- and by the 19 way, you also knew from the trial, way before the 20 judgment, that you had lost all of your arguments 21 about offsetting the damages due to hedging 22 because the Court ruled from the bench on that 23 during the trial, right?		23 MR. CLUBOK: I'm going to finish up one 24 more thing here.	
24 A The Court made a ruling on hedging during 25 the trial, yes.		25	

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<p>1 BY MR. CLUBOK:</p> <p>2 Q Did you tell anyone else in the 3 organization other than Mr. Seery or the debtor's 4 outside counsel, the Pachulski firm, about this 5 analysis that you had performed or that you had 6 blessed?</p> <p>7 A I believe -- without characterizing 8 whether it's been performed or blessed, the 9 document will speak for itself, but I believe that 10 Mr. DiOrio was aware of this analysis.</p> <p>11 Q Why do you believe that?</p> <p>12 A Because he was the person who was in 13 charge of the -- coordinating the Sentinel audit.</p> <p>14 Q Who made Mr. DiOrio aware of this?</p> <p>15 A I believe it would have been me.</p> <p>16 Q Who else did you make aware of this other 17 than Mr. DiOrio and obviously Mr. Kemp?</p> <p>18 A This specific analysis, I don't know that 19 I discussed it with anyone else.</p> <p>20 Q Did you?</p> <p>21 A Not that I recall.</p> <p>22 Q I'm going to hand you what's been marked 23 as Exhibit 53. Exhibit 53 is an e-mail dated 24 June 16th, 2020 in which you forward this analysis 25 to Mr. DiOrio, Mr. Sevilla and Katie Irving. Do</p>	<p>1 independent directors or with their outside 2 counsel?</p> <p>3 MS. SMITH: Objection, form.</p> <p>4 A I only remembered sharing it with 5 Mr. DiOrio. So I can't say that I expected this 6 information to be -- that I recall expecting this 7 information to be shared with the independent 8 directors.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Did you bring this to Mr. Surgeon's 11 attention in 2020?</p> <p>12 A This document? Not that I recall.</p> <p>13 Q How about this analysis or anything about 14 this subject in 2020?</p> <p>15 A This analysis, no. Anything about this 16 subject, I would have to think about further.</p> <p>17 Q This analysis clearly -- the people you 18 sent this e-mail to, you expected them to all know 19 about the ATE policy, right?</p> <p>20 A They all did know about the ATE policy.</p> <p>21 Q And you discussed this analysis also with 22 Mr. Ellington at some point?</p> <p>23 A I don't know that I did.</p> <p>24 Q But you certainly never mentioned the 25 ATE policy again to Mr. Surgeon at any point after</p>
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<p>1 you see that?</p> <p>2 A Yes. I remembered forwarding it to 3 Mr. DiOrio. I forgot who I CC'd, which was 4 Mr. Sevilla and Ms. Irving.</p> <p>5 Q And you did not -- you forwarded it to 6 those three individuals but not to Greg Demo, 7 correct?</p> <p>8 A Greg Demo is not on this e-mail.</p> <p>9 Q And you did not forward it to 10 Mr. Feinstein or Mr. Morris at the Pachulski firm, 11 correct?</p> <p>12 A That's correct.</p> <p>13 Q And you did not forward it to Mr. Nelms or 14 Mr. Dubel or Mr. Seery, correct?</p> <p>15 A No -- nobody is on this e-mail except for 16 the people on this e-mail.</p> <p>17 Q Is there any other way that you 18 communicated this information that you chose to 19 share with Mr. DiOrio, Mr. Sevilla and 20 Ms. Irving -- is there any other way that you 21 believe you ever tried to communicate this 22 information that you chose to share with 23 Mr. DiOrio, Mr. Sevilla and Ms. Irving that's 24 reflected in Exhibit 68 with anybody at all who 25 you expected to share the information with the</p>	<p>1 the time the debtor declared bankruptcy, correct?</p> <p>2 A I don't know if we talked about it or not.</p> <p>3 I don't remember.</p> <p>4 Q As you sit here today, you can't recall 5 ever reminding Mr. Surgeon about the ATE policy 6 after the bankruptcy commenced, correct?</p> <p>7 A Sitting here today, I can't remember that 8 conversation having taken place.</p> <p>9 MR. CLUBOK: Okay. Let's take a break.</p> <p>10 THE VIDEOGRAPHER: The time is 5:20 p.m. 11 We are off the record.</p> <p>12 (Recess taken from 5:20 p.m. CDT to 13 5:39 p.m. CDT)</p> <p>14 THE VIDEOGRAPHER: The time is 5:39 p.m. 15 We are back on the record.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q We're turning to Exhibit 59. Exhibit 59 18 is an e-mail chain with the top e-mail dated 19 August 11th, 2017, from Carter Chism, C-h-i-s-m, 20 to Mr. Patel, P-a-t-e-l, attaching a document 21 that's called CDO Fund and HFP Balance Sheets at 22 8/7/17. It's an Excel sheet that's attached as 23 part of Exhibit 59. Do you see that?</p> <p>24 A I do.</p> <p>25 MS. SMITH: And like yesterday, Shannon,</p>

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1	is this the full exhibit of the Excel?	1	goal was to transfer all of the assets out of HFP
2	MR. CLUBOK: It's the same document that	2	and CDO Fund to Sentinel to purchase the
3	was used yesterday, Exhibit 59. It was marked	3	\$100 million ATE policy in August of 2017,
4	yesterday, I believe.	4	correct?
5	BY MR. CLUBOK:	5	A I don't know that it's clear from this
6	Q So for Exhibit 59, we're going to turn to	6	document per se, but I did know that, you know,
7	page 3, which is the first, working backwards	7	substantially all of the assets were going to
8	e-mail in the chain.	8	be -- were included in the ATE policy.
9	A Can you -- will you give me the Bates	9	Q And the attachment, which has a number of
10	number?	10	10 different worksheets including the first one which
11	Q It ends with 85.	11	says CDO Opportunity Master Fund, LP, Combined
12	A Okay. Got it.	12	Assets and Liabilities, and then another document
13	Q And the Bates label ending in 85 is where	13	that says Highland Financial Partners, LP,
14	the e-mail starts, and it starts with Mr. Stoops	14	Combined Assets and Liabilities, show that, the
15	sending an e-mail to a number of people, including	15	assets and liabilities of those two respective
16	yourself. Do you see that?	16	entities, correct?
17	A I do, yes.	17	A Yes. But I don't know that those -- well,
18	Q And the e-mail says, Jeremy, who is the	18	I know they were attached to -- this was attached
19	first person on the To line, you are the third	19	to the top-level e-mail and that's what it shows.
20	person on the To line, says: Jeremy, Please send	20	Q Right. And one question I have is --
21	custodial admin details for the following entities	21	well, first of all, there's a schedule that was
22	22 to JP Sevilla and Isaac (copied).	22	constructed in connection with the purchase
23	That Isaac is you, correct?	23	agreement. The purchase agreement is Exhibit 2
24	A Yes.	24	24 and I believe you said you've never seen it. I'm
25	Q And they asked for custodial admin details	25	25 going to give you a copy of it just to confirm
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1	for Highland Financial Partners, we've called HFP;	1	1 that that's true. This was Exhibit 2. It's a
2	CDO Hold Co, which is a sub of HFP, correct?	2	2 Purchase Agreement dated August 7th, 2017.
3	A Yes.	3	3 A Mr. Clubok, are we done with 59?
4	Q Highland Financial Corp., which is another	4	4 Q No.
5	sub of HFP at the time, correct?	5	5 A Should I put it up or keep it --
6	6 A I think so, but I'm not 100 percent sure.	6	6 Q I want you to keep it up because I'm going
7	Q And then SOHC, which was a sub of HFP at	7	7 to ask you to compare something.
8	the time, right?	8	8 A Got it. Okay.
9	9 A Yes.	9	9 Q There's a purchase agreement that was
10	Q Then the CDO Master Fund and two of its	10	10 dated as of August 7th, 2017, and you said before
11	subsidiaries or affiliates, correct?	11	11 you believe -- you thought you had never seen
12	12 A Those look like the feeder funds.	12	12 this. Looking at it now, do you want to change
13	Q Okay. The feeder funds. But there are	13	13 your answer or do you still believe you've never
14	basically four HFP entities, the first four names	14	14 seen this?
15	that I mentioned, and then there are three	15	15 A No, I don't think I've ever seen this.
16	CDO Fund entities, correct?	16	16 Q Okay. Well, what about Schedule A, which
17	17 A Yes.	17	17 is somewhat like that Appendix 1, but it's got
18	Q And he says he included those feeder funds	18	18 different assets listed and in some cases
19	19 for CDO just in case there's any cash held at	19	19 different values. Have you ever seen Schedule A
20	20 these entities. Do you see that?	20	20 before?
21	21 A I do see where he says that, yes.	21	21 A No, I haven't.
22	Q And this is all part of the purchase of	22	22 Q Okay. And so I take it you don't know
23	23 the ATE policy in August of 2017, correct?	23	23 whether or not the asset information reflected in
24	24 A That's what it appears to be.	24	24 Exhibit 59 was what was used to populate
25	Q And it's clear from reading this that the	25	25 Schedule A of Exhibit 2?

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1 A No. I don't think I've seen either of		1 maybe what the difference is, but they weren't	
2 these two things before.		2 exactly the same.	
3 Q Okay. Do you -- why were you part of this		3 Q Fair enough. But at some point UBS had	
4 whole chain? What was your role in this part of		4 either amended its complaint or submitted expert	
5 the transaction? And in particular, if you know,		5 reports that reflected the roughly \$500 million in	
6 why did Mr. Stoops specifically ask for the		6 principal liability that was ultimately awarded;	
7 details to be sent to both you and Mr. Sevilla?		7 is that true?	
8 A I mean, I don't know what was in		8 A I know the number went down, but I don't	
9 Mr. Stoops's mind, but I can speculate.		9 remember exactly how it matched up to the final	
10 Q What did you understand your role to be at		10 judgment because there were a lot of toggles that	
11 the time in connection with this information that		11 went on with the expert reports.	
12 was forwarded to you?		12 Q Right. But let's say within 20 percent	
13 A My best guess as to why I was involved in		13 the amount that UBS was seeking as of 2017	
14 this process is because I was the guy in charge of		14 pursuant to its expert reports was the amount that	
15 the legal bills. And so it would have been		15 was ultimately awarded; fair to say?	
16 relevant to payment of the legal wires that you		16 A Sitting here today, I don't know the	
17 see on the first page of this exhibit.		17 answer to that. They were big numbers. I mean,	
18 Q And so all of those payments were made		18 there's no dispute they were big numbers, but I	
19 prior to the transfers?		19 don't remember exactly what they were, if it was	
20 A I don't know.		20 20 percent, 30 percent, 10 percent.	
21 Q Do you know whether or not there was any		21 Q Okay. Certainly you knew that UBS was	
22 effort to satisfy the liabilities of CDO Fund and		22 seeking at least \$500 million plus interest as of	
23 SOHC -- sorry, strike that.		23 this date of this transfer, correct?	
24 Do you know whether there was any effort		24 A As of August 2017, I think that I knew	
25 to satisfy the liabilities of CDO Fund and HFP		25 that UBS was seeking \$500 million or so.	
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1 prior to transferring all of these assets to		1 Q And the whole aim of this transfer was to	
2 Sentinel in 2017?		2 create an -- or to purchase an ATE policy with	
3 A I don't know.		3 respect to that UBS litigation that was pending in	
4 Q Do you know at that time whether or not		4 New York, correct?	
5 there was any estimation that was being made at		5 A The August 2017 transaction was the	
6 either of these two entities for amounts that		6 purchase of an ATE policy relative to the UBS	
7 could be due to UBS in connection with the		7 state court action.	
8 litigation?		8 Q Okay. I'm going to turn to Exhibit 4	
9 A To the best of my recollection, accounting		9 which is a document dated August 11th, 2017, that	
10 had taken UBS's initial complaint and the number		10 you are also on the to line. There's a whole host	
11 identified in the initial complaint and then just		11 of people.	
12 rolled that number forward year over year.		12 A Do I keep or do I throw?	
13 Q And indeed UBS ultimately collected		13 Q You can put it in front of me.	
14 roughly the amount plus interest that was in its		14 A No, these?	
15 initial complaint pursuant -- or strike that.		15 Q You can set it aside. Take a look at	
16 UBS was awarded as part of Phase 1,		16 Exhibit 4, please. Exhibit 4 is an e-mail from	
17 roughly the amounts that it had identified in its		17 David Willmore to a host of people, including	
18 initial complaint plus PJI, correct?		18 yourself, Mr. Chism, Ms. Irving, Mr. Sevilla,	
19 A That's not exactly right.		19 copying Mr. Surgent, Mr. Stoops and others and its	
20 Q Why not?		20 subject is Sentinel Wiring Info. Do you see that?	
21 A So the initial complaint was for		21 A Yes.	
22 \$746 million in principal, and to the best of my		22 Q And it -- in an e-mail below, it	
23 recollection the judgment principal amount was		23 references instructions to wire cash from all the	
24 something like 530. I know, we're talking about		24 HFP Funds and all the CDO Funds to Sentinel,	
25 enormous numbers where it kind of doesn't matter		25 correct?	

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1 A That's what Mr. Chism says in his e-mail.		1 does it ring a bell that Mr. Willmore was	
2 Q And those two wire transfers totaled		2 responsible for transferring CDO Fund cash and	
3 roughly \$10 million, according to Mr. Willmore's		3 Mr. Stoops was responsible for transferring HFP	
4 e-mail, correct?		4 cash?	
5 A Yes.		5 A I can infer that from the document and it	
6 Q Well, I should say CDO Funds cash totaled		6 wouldn't surprise me, but I don't know.	
7 about \$10 million, according to Mr. Willmore,		7 Q Did you at any point ever mention to	
8 correct?		8 Mr. Seery or to the Pachulski lawyers that all	
9 A I don't honestly know if -- I mean,		9 this cash had been transferred out of CDO Fund and	
10 reading this, Mr. Willmore says there are two		10 HFP to Sentinel just in 2017, a little over	
11 wires that are CDO Fund wires, which wouldn't		11 two years before the bankruptcy?	
12 include HFP. Sitting here today, I have no idea		12 A To the best of my recollection, neither	
13 whether there were two of them.		13 myself nor any of the other individuals mentioned	
14 Q Does it ring a bell --		14 it to him.	
15 A That's what it says.		15 Q Did you think that you personally as a	
16 Q Does it ring a bell that the total amount		16 lawyer who was working for the debtor had a	
17 of cash including the HFP cash was closer to		17 fiduciary obligation to the debtor at the time?	
18 \$11 million or so?		18 A I believe you do, yes.	
19 A No. No.		19 Q Did you have a fiduciary obligation to	
20 Q But fair to say you understood on		20 ensure that the debtor -- strike that.	
21 August 2017, that all of the cash in CDO Fund and		21 From January 2020 forward, is it fair to	
22 HFP was being wired to Sentinel, correct?		22 say that there were independent directors who were	
23 A Apparently I did.		23 in charge of the debtor?	
24 Q And do you know what was the consideration		24 A Yes.	
25 for that cash at the time?		25 Q And you understood you ultimately reported	
	294		296
1 A I knew that it was in consideration of the		1 up to them?	
2 ATE policy.		2 A That's fair to say.	
3 Q Did you know how the value of the		3 Q And you understood that you had a	
4 ATE policy compared the total transfers that were		4 fiduciary duty to ensure that they were made aware	
5 being made at the time?		5 of all material information necessary to carry out	
6 A No, I did not.		6 their jobs?	
7 Q Did you know whether it was for equivalent		7 A I'm not sure how -- I'm not sure how	
8 value?		8 the -- that I had -- say that one more time. That	
9 A I didn't know what the assets were so I		9 I had a fiduciary duty to make them aware of all	
10 couldn't comment one way or another.		10 facts that they needed for their job?	
11 Q Turning to Exhibit 5, this is a separate		11 Q Yeah. Did you believe as part of the	
12 e-mail from Mr. Stoops that responds to Carter		12 fiduciary duties that you understood you owed the	
13 Chism's e-mails. And you can see Mr. Stoops says:		13 debtor, that you had an obligation to the best of	
14 All cash has been sent. Working on DTC		14 your ability to make sure that Mr. Seery and the	
15 securities. Still waiting on delivery		15 other directors were apprised of any material	
16 instructions for physicals from Legal.		16 information that you reasonably believed would be	
17 You see that?		17 necessary for them to do their jobs in managing	
18 A I do.		18 the estate?	
19 Q Was Mr. Stoops the one responsible for		19 A No. My understanding -- I understood my	
20 transferring the HFP cash?		20 job was to do the tasks that I was assigned.	
21 A I don't know.		21 Q There was a number of times after this	
22 Q Did Mr. Stoops have a role in connection		22 transfer in August 2017, where questions arose	
23 with HFP at the time?		23 about the transfers that were supposed to have	
24 A Yes.		24 been made, correct?	
25 Q Okay. So looking at these two documents,		25 A Sorry, I really don't --	

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1	MS. SMITH: Objection, form.	1	BY MR. CLUBOK:
2	A I don't understand the question as asked.	2	Q Sir, do you remember this exchange? And
3	BY MR. CLUBOK:	3	in particular I want to point your attention to
4	Q So in August 2017, you were copied on	4	the first page that's Bates-labeled 35 of
5	these documents that purported to show there had	5	Exhibit 62 where you --
6	been transfers made from CDO Fund and HFP to	6	A Go ahead.
7	Sentinel Reinsurance, correct?	7	Q Where you are specifically e-mailing
8	A Yes.	8	Carter Chism to say that: CDO Fund is and has
9	Q And over the next couple of years, did you	9	been insolvent since the financial crisis of 2009.
10	come to learn that there were questions about	10	Do you see that?
11	whether those transfers had properly been	11	A I do see that, yes.
12	effectuated?	12	Q And then in response, Carter Chism says:
13	A I didn't really get involved in that until	13	Thinking about this further, I believe the
14	mid -- like kind of third quarter of 2020.	14	CDO Opps fund was included in the transfer to
15	Q Well, you were asked about information	15	Sentinel.
16	relating to the transfers as early as February of	16	Do you see that?
17	19 2019, weren't you?	17	A I do.
18	A I was? Okay. I don't recall that.	18	Q And this is an e-mail that you and
19	Q I'm going to share with you what's been	19	Mr. Sevilla and Mr. DiOrio and Clifford Stoops are
20	marked as Exhibit 62. Exhibit 62 has an e-mail	20	all copied on, correct?
21	21 chain that begins with Ernest Ramos of BNY Mellon	21	A Yes.
22	22 reaching out to Carter Chism about custody	22	Q So this is another reminder that there had
23	23 invoices.	23	been this transfer to Sentinel, right?
24	A I apologize. Where are you, sir?	24	A I suppose, yes.
25	Q The very last e-mail in the chain working	25	Q Okay. Now, your e-mail to Carter Chism
	298		300
1	backwards. If you turn to the page that's	1	says: Jason, CDO Fund and has been insolvent.
2	Bates-labeled 39 at the end.	2	Do you see that?
3	A Give me a moment to review it.	3	A Yes.
4	MS. SMITH: Is this the complete e-mail?	4	Q Did you mean to send that e-mail to Jason
5	MR. CLUBOK: This is the e-mail that was	5	Martinez?
6	marked as Exhibit 62 yesterday that I presume is	6	A No.
7	the complete e-mail.	7	Q Why did you say Jason?
8	MS. SMITH: In the middle it says: See	8	A I was suggesting -- I don't recall
9	column M for approved action, and I don't see	9	exactly, but I know what my practice was and I
10	anything with column M.	10	think I was suggesting language to Mr. Chism that
11	MR. CLUBOK: What page are you on?	11	he could use to go back to Mr. Martinez
12	MS. SMITH: 9039.	12	Q I see. So you -- this is a draft e-mail
13	MR. CLUBOK: Yeah. Well, I don't know.	13	of what you were suggesting that Mr. Chism could
14	Sometimes the top -- yeah. There was originally	14	send to Jason Martinez in response to the question
15	attachments, but on this particular version of the	15	that he asked, correct?
16	document, I don't believe it included the	16	A Correct.
17	attachments. But in any event, yeah -- -- look,	17	Q And when you say that CDO Fund is and has
18	as I stated, the first e-mail refers to attached	18	been insolvent since the financial crisis, you
19	invoices. Obviously those attached invoices	19	weren't going to tell him that CDO Fund actually
20	aren't included as part of this document, just the	20	had some assets in August of 2017, correct?
21	cover e-mail. And then Carter Chism talks about	21	MS. SMITH: Objection, form.
22	column M presumably in the attached invoices. If	22	A I mean, I don't know that I was going to
23	I could just focus the questions I want to ask of	23	mention it in this communication, but Bank of
24	Mr. Leventon.	24	New York Mellon was actually the bank for those
25		25	funds that was directly involved in apparently the

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<p>1 transfers, as I'm noticing from the earlier 2 exhibits. So they certainly knew about it.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Do you know what Sebastian Clarke is?</p> <p>5 A Who?</p> <p>6 Q Have you ever heard of an entity called 7 Sebastian Clarke?</p> <p>8 A No, sir.</p> <p>9 Q Are you aware of Sentinel ever 10 transferring assets to an entity called Sebastian 11 Clarke?</p> <p>12 A I'm sorry, sir, I don't know that name.</p> <p>13 Q You've never heard that name before ever?</p> <p>14 A Candidly, I thought it was a person when 15 you first asked it.</p> <p>16 QOkay. I'm going to hand you what we're 17 going to mark as Exhibit 69.</p> <p>18 (Deposition Exhibit 69 marked for 19 identification.)</p> <p>20 BY MR. CLUBOK:</p> <p>21 QIt is a copy of UBS's First Request for 22 Production of Documents to Debtor Highland Capital 23 Management, dated September 28th, 2020. Do you 24 see that?</p> <p>25 A Yes.</p>	<p>301</p> <p>1 Q Was there -- so was Mr. Willmore still 2 there?</p> <p>3 A Mr. Willmore was no longer employed by the 4 debtor.</p> <p>5 Q Who was Mr. Willmore employed by at that 6 time?</p> <p>7 A He was employed -- well, I don't know who 8 exactly he was employed by, but he started to work 9 for some NexPoint affiliate and didn't work on any 10 further Highland stuff.</p> <p>11 QOkay. Did you inquire of Mr. Willmore as 12 to where you would go to find the CDO Fund asset 13 information?</p> <p>14 A I think I did actually.</p> <p>15 QAnd what did he tell you?</p> <p>16 A He generally pointed me to some accounting 17 drives on the G drive.</p> <p>18 QWell, you certainly had an e-mail that 19 talked about how all of CDO Fund's assets had been 20 moved to Sentinel in approximately August of 2017, 21 correct? Actually, you had many e-mails that 22 reflected that in your inbox, correct?</p> <p>23 A I mean, as I previously stated, the 24 e-mails were separate from the production process 25 that I was involved in and that was agreed to with</p>
<p>1 Q So were you -- you were partially 2 responsible for helping respond to this discovery 3 request; is that true?</p> <p>4 A I was part of a team of people 5 responsible.</p> <p>6 Q Did you review this request carefully?</p> <p>7 A I don't know about carefully, but I 8 certainly reviewed it.</p> <p>9 Q Would it have been your practice to review 10 a document request like this carefully?</p> <p>11 A I definitely reviewed it and understood 12 its contents. I don't know what carefully means, 13 but I definitely reviewed it and knew what it 14 said.</p> <p>15 Q And at the time you reviewed this, you had 16 the ability to obtain the asset information 17 about -- from CDO Fund, SOHC and HFP, correct?</p> <p>18 A That's a really hard question to answer. 19 Not exactly. Not really.</p> <p>20 Q Well, who would have had information about 21 CDO Fund in September of 2020 who was still 22 working for the debtor?</p> <p>23 A So that's the problem, is I don't think 24 there was an accountant who was responsible for 25 CDO Fund at that point.</p>	<p>302</p> <p>1 Pachulski, and all of those e-mails were actually 2 sitting at Meta-e and were accessible by 3 Pachulski.</p> <p>4 Q Right. But you personally had access to 5 information about transfers from CDO Fund to 6 Sentinel at the time you reviewed this document 7 request that's been marked as Exhibit 69, correct?</p> <p>8 A In the e-mails, yes.</p> <p>9 Q And you knew that that information existed 10 in the e-mails, whether you chose to look at them 11 or not at the time, right?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 A I knew that information was in the e-mails 14 that had been sent to Meta-e.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q And did you specifically tell anyone at 17 the Pachulski firm that there is information about 18 what happened to CDO Fund's assets in August of 19 2017, available in the e-mails that were sitting 20 at Meta-e?</p> <p>21 A No, the e-mails were carved out completely 22 from the process I was involved in.</p> <p>23 Q Same answer with respect to HFP's assets, 24 including SOHC's assets, correct?</p> <p>25 A Everything that was in the e-mails I did</p>

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<p>1 not look at as part of this response. And I 2 understand from Mr. Morris was that he told you 3 that we weren't going to be looking through 4 e-mails in response to these requests because that 5 was being handled separately.</p> <p>6 Q Mr. Morris told you that he told me, 7 Andrew Clubok, that?</p> <p>8 A That's --</p> <p>9 Q That's what you're claiming?</p> <p>10 A That's what I recall, is that it was 11 agreed that the e-mails would be separate.</p> <p>12 Q Mr. Morris told you that he had an 13 agreement with me, Andrew Clubok, that they didn't 14 have to search the e-mails for information 15 relating to CDO Fund and HFP's assets?</p> <p>16 A That -- it may not have been an agreement 17 per se, but it was -- essentially Mr. Morris and 18 Mr. Demo told me not to worry about the e-mails 19 and they would take care of it.</p> <p>20 Q And did you tell Mr. -- when they told you 21 that, did you say, hey, but there's this transfer 22 that occurred in 2017 that will show you exactly 23 what assets were there at CDO Fund and HFP as of 24 August 2017? Did you say anything like that to 25 them, in words or substance, when they told you</p>		<p>1 okay. There isn't a single request in here that 2 caused you to mention to the Pachulski firm or 3 Mr. Seery or the other directors, hey, there's all 4 this information about the assets that were held 5 at HFP and CDO Fund and SOHC as of August 2017, if 6 we just go look at that time period when the 7 assets were all transferred to Sentinel. Nothing 8 caused you --</p> <p>9 MS. SMITH: Objection, form.</p> <p>10 A You mean in the e-mails, that that 11 information was sitting in the e-mails?</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q That that information was available 14 anywhere.</p> <p>15 A The only place that I know that it was 16 available was the e-mails and that was, again, 17 carved out of what I was looking at. But I 18 understand that these issues were being looked at 19 by whomever was reviewing the e-mails.</p> <p>20 Q Did you think you had any kind of 21 fiduciary obligation to affirmatively tell the 22 debtor counsel that it wasn't just a treasure hunt 23 or a needle in the haystack hunt in those e-mails, 24 but that specifically in August of 2017 if they 25 focused on your e-mails and Mr. Sevilla's and a</p>	
<p>1 we've got somebody else reviewing the e-mails?</p> <p>2 A No.</p> <p>3 Q And by the way, you were told by Mr. Demo 4 that it was a high priority item to get the asset 5 information for CDO Fund and SOHC and HFP, 6 correct?</p> <p>7 A He may have said that at one point, but 8 then we had additional iterations as to how we 9 were going to respond and ultimately I was tasked 10 with tracing the -- I can't remember if it was 11 March or May of 2009, I think it was May of 2009 12 through -- but those assets and explain where they 13 were today.</p> <p>14 Q If you look at Exhibit 69, you see that 15 the request included -- and for No. 8, it was: 16 All Documents pertaining to the assets and 17 liabilities of HFP, CDO Fund, and SOHC, including, 18 but not limited to -- and then it lists a number 19 of subcategories. Do you see that?</p> <p>20 A I do.</p> <p>21 Q And did you review that request carefully 22 to see what was being requested in terms of assets 23 and liabilities of HFP, CDO Fund and SOHC?</p> <p>24 A Yes.</p> <p>25 Q And did you, in words or substance --</p>	306	<p>1 few others that we've seen today, they could find 2 all the information they were looking for?</p> <p>3 A At that point I was a task lawyer with 4 what Pachulski was telling me, so if it was in the 5 e-mails, frankly, I just ignored it because they 6 had them and I knew that they were focused on 7 these issues as well.</p> <p>8 Q And even though you knew they were in the 9 e-mails, you ignored them?</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 A See, let me rephrase. I don't know that 12 I, sitting here today, knew that all these 13 e-mails -- let me rephrase.</p> <p>14 I don't know that in September 2020 I knew 15 that all those e-mails existed from 2017, but to 16 the extent they existed, they had been sitting 17 with Pachulski from the end of July.</p> <p>18 THE WITNESS: Did they turn off the heat?</p> <p>19 MS. SMITH: Yes, they turned off the air.</p> <p>20 THE WITNESS: Okay.</p> <p>21 MS. DANDENEAU: Wonder if we should open 22 the door. Would that be better?</p> <p>23 THE WITNESS: I think that might mess with 24 the acoustics.</p> <p>25 MS. DANDENEAU: What?</p>	308

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1 THE WITNESS: I think that might mess with 2 the acoustics. No, it won't? Maybe. 3 BY MR. CLUBOK: 4 Q I'm going to -- 5 MR. CLUBOK: Keep this here. Let's go to 6 this document. 7 BY MR. CLUBOK: 8 Q I'm going to hand you what's been marked 9 as Exhibit No. 70. 10 (Deposition Exhibit 70 marked for 11 identification.) 12 BY MR. CLUBOK: 13 Q It's an e-mail chain and I'm going to ask 14 you to start on the page that's Bates labeled -- 15 ends with a 17. Turn -- second-to-last page -- or 16 third-to-last page. You can see there's an e-mail 17 from James Romey at DSI to you, copying Greg Demo 18 and Seery.		1 s pecifically. 2 Q Okay. But it's basically talking about -- 3 okay. There's questions and it says that there 4 may be confusions over the name and David Klos 5 asks for you to chime in and they're trying to 6 figure out, you know, ownership, I guess, in 7 Multi Strat Credit Fund, correct? And in 8 particular Greg Demo chimes in and says, beginning 9 at the bottom of page 16: The confusion we're 10 having is that there's an asset shown on the 11 worksheets that we got from Isaac that says 12 Highland CDO Opportunity Master Fund has a 13 \$21.5 million limited partnership interest in 14 MVCDO. 15 Do you see that? 16 A Yes. 17 Q And Greg goes on to say, so the issue you 18 raise is exactly the issue we're trying to figure 19 out. Going off the org chart, I thought this 20 entity was 100 percent owned by MSCF. We're 21 trying to figure out what the \$26 million asset on 22 CDO Fund's books means and whether it's a direct 23 interest in MCVDO [sic] and LP interest in MSCF or 24 redemption interest. I haven't seen Highland CDO 25 Opportunity Master Fund listed as either an LP or	
19 A Sorry, this is hard to read. If you'll 20 give me a moment. 21 Q Right. You're at the page that ends in 22 Bates number 117, right? 23 MS. SMITH: Let him read the whole thing, 24 please. 25 A I'm going to review the document.	310		
1 MR. CLUBOK: In that case, let's go off 2 the record. 3 THE VIDEOGRAPHER: We are off the record 4 at 6:16 p.m. 5 (Recess taken from 6:16 p.m. CDT to 6 6:19 p.m. CDT) 7 THE VIDEOGRAPHER: The time is 6:19 p.m. 8 We are back on the record. 9 BY MR. CLUBOK: 10 Q Sir, turning to the page in Exhibit 70 11 that is -- ends with 17, do you see where there's 12 an e-mail from James Romey to you saying: Before 13 we give anything to UBS today, we need to track 14 down what the Highland Credit Opportunities CDO 15 Ltd. partnership interest in MSCF means and how 16 it's accounted for on MSCF's books, i.e., whether 17 it's part of the existing redemption group, or how 18 it has any remaining interest in the fund. Or if 19 I'm misunderstanding something, please let me know 20 ASAP. 21 You see that? 22 A Yes. 23 Q And MSCF refers to Multi Strat, correct? 24 A I think that means the Multi Strat Credit 25 Fund. I'm just not sure which level it would be	312	1 as one of the redeemers. 2 Do you see that? 3 A Actually I lost you while you were 4 reading, but I will take your word for it that you 5 read it right. 6 Q I paraphrased it slightly and skipped what 7 I thought was not every word. 8 A Okay. 9 Q But the gist of this is -- 10 A Could you tell me -- sorry, I don't know 11 where we are in the document. 12 Q The gist of what Greg is asking -- 13 A Sorry, which e-mail from Greg? 14 Q There's an e-mail from Greg at the bottom 15 of the page that ends in 16 -- 16 A Okay. I'm there. 17 Q -- that is to you and other people -- 18 A Yes. 19 Q -- copying Seery -- 20 A Yes. 21 Q -- and says they're having confusion over 22 assets shown on worksheets they got from Isaac, 23 that's you, about CDO Fund's interest in 24 Multi Strat, correct? 25 A That's what it says.	

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1 Q And you say: Dave -- and I assume you're 2 referring to Dave Klos -- I will call you to 3 figure this out. 4 Do you see that?		1 Q And he says basically, this is really hard 2 and we can't find more information about what 3 you're asking. 4 MS. SMITH: Objection, form.	
5 A Yes. 6 Q And then James then follows up and says, 7 are you guys available for a call at 6 p.m. 8 Eastern for a status check, on the same day. And 9 by the way, it says importance high. 10 Do you see that?		5 BY MR. CLUBOK: 6 Q Is that the impression that he conveys 7 from when you read this document? 8 MS. SMITH: Objection, form.	
11 A I do. 12 Q And Greg says he's going to circulate a 13 dial-in, and you then jump in and say: Guys, I 14 don't think this is a prerequisite to delivering 15 materials to UBS in satisfaction of their 16 concerns. I am prepping the documents set for 17 delivery tomorrow. Dave has not worked on this, 18 so I will just call Greg and James. However, this 19 is the current status. 20 Do you see that?		9 A I'll let the document speak for itself. 10 The impression that I got at the time was that he 11 was butting heads with Mr. Demo. 12 BY MR. CLUBOK:	
21 A I do. 22 Q And then Scott says: Isaac and me were 23 instructed by Jim Seery to get this UBS 24 deliverable handled. I was on the phone with -- I 25 was just on the phone with Isaac when the e-mail		13 Q That's the only impression you got from 14 this exchange, that he's butting heads with 15 Mr. Demo? 16 A That's the primary impression that I got. 17 Q Did you get the impression from this 18 document that Mr. Seery, who was the CEO of 19 Highland, had made it clear to you and to 20 Mr. Ellington that these requests were, in fact, a 21 high priority, notwithstanding what 22 Mr. Ellington's views were or your views were? 23 MS. SMITH: Objection, form. 24 BY MR. CLUBOK: 25 Q Okay. Let me just ask it very simply.	
1 came through. Don't see how this is urgent. 2 Especially relative to UBS request. We will get 3 to this when it is a priority. 4 Do you see that?	314	1 Did you get the impression from this e-mail 2 exchange that's reflected in Exhibit 70, that 3 notwithstanding what you and Mr. Ellington may 4 have thought about the priority level of these 5 requests, Mr. Seery definitely believed it was a 6 high priority to respond to these requests from 7 UBS? 8 MS. SMITH: Objection, form.	316
5 A I do. 6 Q And Greg jumps in and says: Scott and 7 Isaac, I spoke to Jim about this issue this 8 morning. It is a high priority at this point and 9 we need to do what we can to push it to 10 conclusion. I understand that it's going to take 11 some work. 12 Do you see that?		9 A Well, I didn't really know what the answer 10 was because I wasn't speaking to Mr. Seery, but 11 Greg was saying that Mr. Seery needed one thing 12 and Scott's saying, no, he doesn't and I was not 13 involved in either of those conversations and then 14 it was just going to be me and Dave trying to 15 figure things out. 16 BY MR. CLUBOK:	
13 A Yes. 14 Q And then Scott writes a fairly lengthy 15 e-mail that begins by saying: I don't think 16 there's a need for a call and I can tell you where 17 we are currently. 18 Do you see that?		17 Q My simple question to you is, did you, 18 from reading this back and forth, have the 19 impression that Mr. Seery believed that this was a 20 high priority for you to respond to regardless of 21 what Mr. Ellington or what you believed? 22 MS. SMITH: Objection, form.	
19 A Yes. 20 Q And that's an e-mail that he copies you 21 on, along with Mr. Seery, James Romey and 22 David Klos. 23 A Yes. 24 Q And Greg Demo. 25 A Yes.		23 A So I wasn't sure, because Mr. Ellington 24 conveyed essentially that -- I mean, to get the 25 deliverable handled, but I don't know that this	

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<p>1 one outstanding item was the most important thing 2 in the deliverable. And then Greg thought that 3 this one outstanding item was the most important 4 thing in the deliverable and I didn't speak to 5 Mr. Seery either way to confirm who was right.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Well, wait a second. You were instructed 8 by Mr. Seery to get this UBS deliverable handled, 9 weren't you?</p> <p>10 A Yes.</p> <p>11 Q And Mr. Seery made it clear to you 12 personally in that call that this was a priority, 13 didn't he?</p> <p>14 A This deliverable, yes. But this one 15 specific item that was holding up the deliverable, 16 I don't remember that.</p> <p>17 Q All right. You then read Mr. Seery 18 telling your -- or telling this group including -- 19 sorry.</p> <p>20 You read Mr. Ellington's -- strike that. 21 Let me start over.</p> <p>22 You read Mr. Ellington's e-mail to 23 Mr. Seery and to others in which he says that 24 there are ghost funds such as these target 25 entities, and by target entities he means</p>		<p>1 Herculean task. Do you see?</p> <p>2 A He does.</p> <p>3 Q And he says: Isaac and myself have spent 4 in excess of 100 hours trying to piece together 5 everything we can to create a true and accurate 6 document-based record of what happened with these 7 target entities.</p> <p>8 Correct?</p> <p>9 A Yes.</p> <p>10 Q As part of that -- and by the way, was 11 that a true statement when you read it, in your 12 mind, that you had gone through a Herculean task 13 to do everything you could to create a true and 14 accurate document-based record of what happened to 15 HFP, CDO Fund and SOHC?</p> <p>16 A I think a more fair characterization is we 17 had put a substantial amount of effort into 18 tracing the May 2009 assets against -- well, 19 figuring out what happened to the May 2009 assets.</p> <p>20 Q My question to you is not that question. 21 So I want you to answer my question.</p> <p>22 Is it true that you and Mr. Ellington 23 did -- had done everything you could to create a 24 true and accurate document-based record of what 25 happened with HFP, SOHC and CDO Fund as of</p>	
<p>1 CDO Fund, HFP and SOHC, correct?</p> <p>2 A I can assume that's what he means, but I 3 don't know.</p> <p>4 Q And he talks about how the ghost funds 5 don't have directors, custodians, administrators, 6 bank accounts and no one knows -- no one knows 7 what they truly retain. Do you see that?</p> <p>8 A I do.</p> <p>9 Q And he claims that UBS is aware of the 10 situation because he's personally discussed it 11 with Andy Clubok, that's me, several dozen times, 12 including as recently as this year, right?</p> <p>13 A He does say that.</p> <p>14 Q And did you know that Mr. Ellington had 15 represented to me that these were ghost funds and 16 there was no way really as a practical matter to 17 figure out how much assets they had or when they 18 last had assets or words to that effect?</p> <p>19 A I wasn't privy to your conversations.</p> <p>20 Q Did you -- did Mr. Ellington ever tell 21 you, in words or substance, that he had conveyed 22 that information to UBS other than what's here in 23 Exhibit 70?</p> <p>24 A I don't recall him ever doing that.</p> <p>25 Q Okay. He then said, the project is a</p>	318	<p>1 August 15th, 2020?</p> <p>2 MS. SMITH: Objection, form.</p> <p>3 A I think that was a slight 4 mischaracterization of the work that we were 5 doing, which was tracing the assets.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Did you --</p> <p>8 A And that we had done a lot of work.</p> <p>9 MR. CLUBOK: Move to strike as 10 nonresponsive.</p> <p>11 A Sorry, I was addressing the Herculean task 12 portion of it.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Okay. Well, I'm asking you whether it was 15 true as Mr. Ellington reported to Mr. Seery and 16 others, that as of August 15th, 2020, you were -- 17 you had spent 100 hours trying to piece together 18 everything you could to create a true and accurate 19 document-based record of what happened with HFP, 20 SOHC and CDO Fund?</p> <p>21 A I think his statement was not precise, and 22 I believe that what I stated was a more precise 23 characterization of what he was saying.</p> <p>24 Q Did you make any effort to correct his 25 statement to this audience?</p>	320

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1 A I never responded to this e-mail and I 2 wasn't going to get involved in a -- what I viewed 3 to be essentially a butting of heads between 4 Mr. Ellington and Pachulski.		1 Q To whom? 2 A So Mr. Demo knew exactly what I was 3 working on, as did -- well, I take it back. I 4 don't know if DSI knew what I was working on. But 5 Mr. Demo knew exactly what I was working on and I 6 never represented to him, or anybody that I 7 remember, maybe I did, but I just -- I don't 8 remember having that conversation of I'm going to 9 do a forensic audit of the funds.	
5 Q At the time did you think it was accurate 6 that you had been doing everything you could to 7 create a true and accurate document-based record 8 of what had happened with HFP, SOHC and CDO Funds?		10 Instead, it was, I'm going to identify 11 what did they have as of this date, which has 12 already been produced to UBS and show UBS what 13 happened to those assets.	
9 A That was not what I had been tasked with 10 doing. I had been tasked with the other thing 11 that I've already described.		14 Q You've said that you and -- he says that 15 you and he were speaking literally daily about 16 this. Do you see that?	
12 Q So is the answer to my question no?		17 A Yes.	
13 A No, I didn't because that wasn't my task.		18 Q Is that true, that you were speaking daily 19 about responding to UBS's document request with 20 respect to the assets?	
14 Q Is the answer to my question no?		21 A This is the -- before the document 22 request.	
15 A I said no, because that's not what I was 16 tasked with doing.		23 Q Okay. This was with respect to -- this is 24 before the formal document request.	
17 Q Are you saying --		25 A I don't know how to respond to that, sir.	
18 MS. SMITH: Objection to form.			
19 BY MR. CLUBOK:			
20 Q You're saying that you had not done 21 everything you could to create or to try to create 22 a true and accurate document-based record of what 23 happened with HFP, SOHC and CDO Fund as of the 24 date of this e-mail, correct?			
25 A Well, I tried to do everything I could and	322		324
1 I put a lot of effort into tracing the May 2009 2 assets and identifying what happened -- where they 3 were today. I put a lot of effort into that.		1 It's before the request for production that are 2 marked as Exhibit 69.	
4 Q But you very -- you had not -- okay.		3 Q Okay. But it -- you knew at the time of 4 August 15, 2020, that UBS had requested all 5 information relating to the assets of HFP, 6 CDO Fund and SOHC, correct?	
5 MR. CLUBOK: Move to strike as 6 nonresponsive.		7 A I don't know that I ever saw UBS requests 8 that -- whenever these informal requests were that 9 predated the request for --	
7 BY MR. CLUBOK:		10 Q I didn't ask you if you ever saw them. I 11 said, did you know, prior to the formal requests 12 that were marked as Exhibit 69, that UBS had 13 requested all information related to the assets, 14 both current and historical, for SOHC, CDO Fund 15 and HFP?	
8 Q I just want you to answer my question and 9 we are going to add more time to this dep if you 10 don't answer my question. Was Mr. Ellington's 11 statement that you and he together had tried to do 12 everything you could to create a true and accurate 13 document-based record of what had happened with 14 HFP, SOHC and CDO Fund?		16 A I knew that UBS certainly was asking for a 17 lot of information, but in terms of exactly how 18 you phrased it just now, I don't remember that 19 part. But UBS was certainly asking for a lot of 20 information and then that's what me and Mr. Demo 21 spoke about, is to kind of how to satisfy that.	
15 MS. SMITH: Objection, form.		22 Q Was this -- Mr. Ellington says that a 23 large majority of your efforts were based on 24 educated guess work, but at the time, you and he 25 both knew that all the assets that CDO Fund and	
16 A The problem is that's a paraphrase of what 17 Mr. Ellington said here and I'm happy to point out 18 where, frankly, I disagree with Mr. Ellington on 19 this.			
20 BY MR. CLUBOK:			
21 Q But did you point out to anyone on this 22 e-mail chain in any communication, how you 23 disagreed with what Mr. Ellington was saying in 24 this e-mail that you read?			
25 A I think I did actually, yes.			

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1 HFP had, had been attempted to be transferred to 2 Sentinel in 2017, correct?		1 correct?	
3 MS. SMITH: Objection, form.		2 A I knew that the assets -- substantially 3 all of the assets that they had owned in August of 4 2017 had been transferred in -- or attempted to be 5 transferred in 2017.	
4 A With respect to the assets that had been 5 sitting in those SOHC and CDO Fund in May of 2009, 6 most of those weren't the subject of the 2017 7 transfer and there was a lot of -- educated guess 8 work is probably not the right way to say it. We 9 were gathering as many documents as we could to 10 try to figure out what had happened to those 11 assets.		6 Q And Mr. Ellington knew that too, correct, 7 when he wrote this e-mail?	
12 BY MR. CLUBOK:		8 A Mr. Ellington and Mr. Klos knew that, 9 both.	
13 Q At the time Mr. Ellington made the 14 statement about an educated guess, you knew that 15 all the assets that CDO Fund and HFP had had been 16 attempted to be transferred to Sentinel in 2017, 17 correct?		10 Q Okay. And also you knew that Sentinel -- 11 you knew in August 2020, that Sentinel was at 12 least partially owned by Mr. Ellington, correct?	
18 MS. SMITH: Objection to form.		13 A I actually didn't know that, no.	
19 A I knew that substantially all of the 20 assets they had in August of 2017 had been 21 transferred in August of 2017, but that's not 22 necessarily the same as what was there in 2009.		14 Q Okay. But Mr. Ellington certainly knew 15 that at the time, correct?	
23 BY MR. CLUBOK:		16 MS. SMITH: Objection, form.	
24 Q I didn't ask you about that yet.		17 A You'll have to ask Mr. Ellington what he 18 knows. I don't -- I don't know that Mr. Ellington 19 owns any part of Sentinel. I know he's related to 20 it in some way, but I don't know if he owns it.	
25 MR. CLUBOK: I'm going to move to strike		21 BY MR. CLUBOK:	
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1 that part as nonresponsive.		1 A No.	
2 BY MR. CLUBOK:		2 Q But you do know that Mr. Dondero has an 3 economic interest in Sentinel?	
3 Q I'm going to again ask you, hopefully try 4 to answer my question so we can finish this close 5 to on time.		4 A So it's similar to SAS, right. I knew 5 that Mr. Dondero and Mr. Ellington had some 6 involvement with that entity. I didn't know 7 exactly what the structure or ownership was. I 8 knew that they had, essentially, involvement in 9 authority with respect to those entities.	
6 A Okay.		10 Q You do know that Mr. Dondero has an 11 economic interest in Sentinel, correct?	
7 Q I didn't say a word about 2009 yet. I may 8 move to that, but I want a clean answer to my 9 question.		12 A Actually, I don't.	
10 When Mr. Ellington wrote this e-mail 11 that's reflected on the first page of Exhibit 70, 12 you knew at the time and he knew at the time that 13 substantially all of the assets of HFP and 14 CDO Fund had been transferred to an entity that he 15 partially owned in August of 2017, correct?		13 Q Okay. Do you know if Mr. Surgent was made 14 aware that Mr. Dondero and Mr. Ellington had an 15 economic interest in Sentinel when he supposedly 16 made the determination that they were not 17 affiliates -- strike that.	
16 MS. SMITH: Objection, form.		18 Do you know whether or not Mr. Surgent 19 knew about Mr. Dondero and Mr. Ellington's 20 economic interest in Sentinel when he supposedly 21 made the determination you claim he made with 22 respect to Sentinel's status as an affiliate or 23 not an affiliate of Highland Capital?	
17 A I can't give you a clean answer to that 18 question, sir. There are -- if you want to break 19 it up into parts, I'm happy to address it.		24 MS. SMITH: Objection to form.	
20 BY MR. CLUBOK:		25 A I don't know if they have an economic	
21 Q Okay. At the time Mr. Ellington wrote the 22 e-mail that's reflected on the first page of 23 Exhibit 70, you knew that substantially all of the 24 assets of HFP and CDO Fund had been attempted to 25 be transferred to Sentinel in August of 2017,			

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1 interest and I don't know what the content of 2 those conversations were, but I do know 3 Mr. Surgeon's determination. 4 BY MR. CLUBOK: 5 Q Okay. But you don't know if he knew the 6 economic ownership interest that Mr. Dondero or 7 Mr. Ellington may or may not have had in Sentinel 8 at the time he was supposedly asked to make that 9 determination, correct? 10 A I don't know what he knew one way or 11 another. 12 Q I'm going to hand you what's been marked 13 as Exhibit 71. 14 (Deposition Exhibit 71 marked for 15 identification.) 16 BY MR. CLUBOK: 17 Q It's an e-mail from Mike Throckmorton to 18 you, copying David Klos and also to Chris Rice. 19 It's actually an e-mail exchange, I should say, 20 that begins with Chris Rice sending to you a 21 balance of roughly 363 million in the claims 22 account for CDO Opportunity Master as of 23 12/31/2018, and it goes back and forth here. Do 24 you see that? 25 A Yes.		1 A Well, because for years, CDO Fund didn't 2 have any financials and so it just struck me as 3 unusual that they were doing anything with that 4 fund. It was very -- it was strange to me so I 5 asked. 6 Q And are these people, Mike Throckmorton 7 and Chris Rice who are copied on this exchange, 8 people that you went to when you were tasked with 9 helping to identify historical information about 10 the assets of CDO Fund? 11 A Throckmorton, I think yes. Rice, I don't 12 remember. 13 Q Did you direct Mr. Seery or Pachulski to 14 these people for assistance? 15 A Well, they were asking questions of 16 Mr. Klos, and Mr. Throckmorton responded to 17 Mr. Klos. So that wasn't my chain of command. 18 Q I'm going to -- so turning back, though, 19 to Exhibit 70, which is dated August 15, 2020. 20 You say at that time you didn't know -- did you 21 know at that time that UBS was asking for all 22 information relating to the assets, both current 23 and historical, for HFP, SOHC and CDO Fund? 24 MS. SMITH: Objection, form. 25 A I think my prior testimony is that I knew	
	330		332
1 Q And you ultimately say that the CDO Fund 2 number should be about 530 million which accounts 3 for the accrued interest, correct, on the first 4 page? 5 A I think that was reflective of the 6 judgment that had been handed down by the Court. 7 Q Right. So you knew as of -- obviously 8 knew as of July 16, 2020, that CDO Fund had a 9 judgment against it totaling approximately 10 \$530 million including interest, correct? 11 A Yes. 12 Q And you asked why they were doing 13 financials for CDO Fund and you were told it was 14 for tax purposes, correct? 15 A Where did I ask that? 16 Q In the -- your e-mail on page -- the first 17 page of Exhibit 71. 18 MS. SMITH: Review the exhibit. 19 BY MR. CLUBOK: 20 Q Look at the first page. Do you see where 21 it says -- where you give the fund number, and 22 then you say: However, more generally, why are we 23 doing financials for CDO Fund at all? 24 A Yes, I see that. 25 Q Why did you ask that question?	1 UBS wanted a lot of information, but that exact 2 characterization I don't know. I don't remember. 3 BY MR. CLUBOK: 4 Q In words or substance, you knew that the 5 gist of what UBS had been looking for for at least 6 weeks, if not months prior to this, was 7 information about the assets that CDO Fund, SOHC 8 and HFP had both then and historically since 2009; 9 isn't that true? 10 MS. SMITH: Objection. He answered that 11 he didn't remember. 12 A I mean, I -- 13 MR. CLUBOK: Move to -- look, I -- please 14 don't start making speaking objections just 15 because it's getting late. 16 BY MR. CLUBOK: 17 Q I'm asking you a slightly different 18 question and I'm saying, didn't you understand, as 19 of August 15, 2020, that the gist of requests that 20 UBS had made at least weeks before, if not months 21 before, was to get whatever information was 22 available about the assets of CDO Fund, HFP and 23 SOHC, both currently and historically since 2009; 24 isn't that true? 25 A I knew -- I knew UBS was asking for a lot		

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1 of information about what happened to the assets		1 Do you see that?	
2 in those funds and then we went through an		2 A Yes.	
3 iterative process between myself and Mr. Demo to		3 Q And so when you gave this answer, did you	
4 determine what it was that we were going to send,		4 know what the current requests were? When you	
5 but I -- I don't recall ever seeing UBS's		5 wrote this e-mail, at that -- even if you don't	
6 requests. Really I was getting my tasking orders		6 remember now, this is almost a year ago, but at	
7 from Pachulski.		7 the time, had you reviewed UBS's then current	
8 Q Okay. I'm going to hand you what's been		8 request for information when you advised Mr. Seery	
9 marked as Exhibit 72.		9 that they supposedly exceeded what UBS was	
10 (Deposition Exhibit 72 marked for		10 entitled to under the special master order?	
11 identification.)		11 A I apparently knew that you were asking for	
12 BY MR. CLUBOK:		12 documents from 12/31/07 through 12/31/19.	
13 Q It's an e-mail from ten days earlier,		13 Q Did you know what the current requests for	
14 August 5th, 2020, from you to Jim Seery, copying		14 information were at that time when you wrote this	
15 Brad Sharp, James Romey, David Klos, and the		15 e-mail, yes or no?	
16 subject is UBS Supplemental Information Request.		16 A I don't recall if I did one way or	
17 Do you see that?		17 another.	
18 A I do.		18 Q Okay. And you go on to say: HFP and	
19 Q And this -- UBS had made information		19 CDO Fund informed their investors that they had	
20 requests and then they had made supplemental		20 zero net asset values.	
21 information requests, and this is all before the		21 Do you see that?	
22 more formal document requests that we previously		22 A Yes.	
23 reviewed, correct?		23 Q And then you say you've been tracking the	
24 MS. SMITH: Please let him review the		24 assets through on SOHC and CDO Fund. Do you see	
25 document.		25 that?	
	334		336
1 A I see that it says supplemental		1 A Right. That was the task that they had	
2 information request. I was not interfacing with		2 put me on, was to track the assets from May of '09	
3 UBS on these requests. I don't even remember		3 forward.	
4 being sent them.		4 Q Well, you talk about -- well, first of	
5 BY MR. CLUBOK:		5 all, every single asset that it -- had been there	
6 Q That's not my question. Let's listen to		6 in May of '09 that was still there in August 17th,	
7 my question, please, and answer my question.		7 you knew exactly what had had happened to those	
8 Isn't it true that UBS had made information		8 assets, right?	
9 requests and supplemental information requests		9 MS. SMITH: Objection to form.	
10 with respect to the assets of HFP, CDO Fund and		10 A Actually, I didn't.	
11 SOHC all before the more formal document requests		11 BY MR. CLUBOK:	
12 that we reviewed earlier today?		12 Q Well, you knew that any assets that were	
13 A I don't have any personal knowledge of		13 there in May of 2009 that were still there in	
14 those.		14 August of 2017, had been transferred, pursuant to	
15 Q Okay. But on August 5th, 2020, you		15 that e-mail that you were copied on, to Sentinel	
16 were -- in response to an e-mail from James Seery,		16 for consideration for the ATE policy, didn't you?	
17 the subject being, RE: UBS Supplemental		17 A There were only two such assets and I	
18 Information Request, you respond: UBS's current		18 researched extensively what happened to both of	
19 requests for information exceed what it was		19 those assets. And so I don't necessarily agree	
20 entitled to under the Special Master Discovery		20 that they were effectively transferred by the	
21 Order (attached).		21 ATE policy -- whatever -- whatever it is that	
22 Do you see that?		22 people did, it didn't work, I think.	
23 A I do.		23 Q What were those two assets that you're	
24 Q You said: UBS is asking for documents		24 talking about?	
25 from 12/31/07 through 12/31/19.		25 A The NV -- well, sorry, let me rephrase.	

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<p>337</p> <p>1 The interest in Multi Strat, at whichever level it 2 existed and the records are inconsistent on that, 3 and that creates another problem because at one 4 level, equity interest got extinguished --</p> <p>5 Q We'll come to that.</p> <p>6 A -- and then Greenbriar --</p> <p>7 Q So you had extensively researched</p> <p>8 CDO Fund's interest in Multi Strat and Greenbriar</p> <p>9 and you came to the conclusion that those assets</p> <p>10 had not been properly transferred to Sentinel as</p> <p>11 part of the August 2017 transaction, correct?</p> <p>12 A Can we break it up into a Greenbriar 13 question and a Multi Strat question? Would that 14 be possible?</p> <p>15 Q Sure. With respect to Greenbriar, you</p> <p>16 concluded that Greenbriar's -- the assets that</p> <p>17 CDO Fund held in Greenbriar had never been</p> <p>18 transferred to Sentinel, correct?</p> <p>19 A I concluded that the -- so I was tracking 20 title of assets, and the title of what were 21 preference 2 shares issued by Greenbriar never 22 left CDO Fund's possession. And so this -- when I 23 say I was tracking assets, I was tracking title to 24 assets. That's what this whole process was, was 25 tracking basically if it's -- if you have to</p>	<p>339</p> <p>1 and said this one I can't tell you, this one I 2 don't know about.</p> <p>3 Q Not sure what? Not sure whether or not</p> <p>4 they were transferred to Sentinel? That's my only</p> <p>5 question. I want to know if you're saying that</p> <p>6 you were not sure one way or the other whether</p> <p>7 CDO Fund's interest in Multi Strat, if any, were</p> <p>8 ever transferred to Sentinel. Were you either</p> <p>9 sure they weren't or were you sure they were or</p> <p>10 were you not sure?</p> <p>11 MS. SMITH: Objection, form.</p> <p>12 A I was not sure, and I can explain why.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q I didn't ask for that. So you thought</p> <p>15 there was -- based on all the research you did,</p> <p>16 you thought there was some chance that some assets</p> <p>17 that CDO Fund held in Multi Strat had been</p> <p>18 transferred to Sentinel but you were not sure; is</p> <p>19 that correct?</p> <p>20 A That was one of the possibilities.</p> <p>21 Q And did you ever say that possibility, in</p> <p>22 words or substance, to Greg Demo?</p> <p>23 A I didn't give him any of the 24 possibilities, I just told him I can't figure out 25 what's going on with this asset.</p>
<p>338</p> <p>1 deliver them to UBS tomorrow, how do you do that, 2 who do you call. And that's why title was the 3 important inquiry that I was being asked.</p> <p>4 Q So with respect to Greenbriar, title to</p> <p>5 the assets were never transferred to Sentinel from</p> <p>6 CDO Fund, correct?</p> <p>7 A As far as I'm aware, the title -- as far 8 as my research showed, the title to the Greenbriar 9 Class 2 preference shares were never transferred 10 from CDO Fund to Sentinel.</p> <p>11 Q And are still to this day, as far as you</p> <p>12 know -- or at least as of the time you left</p> <p>13 Highland, owned by CDO Fund, correct?</p> <p>14 A They're titled to CDO Fund. I believe 15 that's the right answer.</p> <p>16 Q Okay. And with respect to the assets in</p> <p>17 Multi Strat, you believed, at least as of the time</p> <p>18 you left Highland, that the title to those</p> <p>19 assets -- that there had been -- strike that.</p> <p>20 That CDO Fund had not transferred any</p> <p>21 interest that it may have had in Multi Strat to</p> <p>22 Sentinel, correct?</p> <p>23 A Well, I actually wasn't sure, and to this 24 day I'm not sure. And I actually highlighted in 25 green on the chart that I was making for Mr. Demo</p>	<p>340</p> <p>1 Q But you didn't tell him that one of the</p> <p>2 reasons you couldn't figure it out is because</p> <p>3 there was a possibility that that asset had been</p> <p>4 transferred to Sentinel? You didn't say that in</p> <p>5 words or substance to Greg Demo, correct?</p> <p>6 A That actually wasn't one of the reasons I 7 couldn't tell. That wasn't one of the reasons I 8 didn't know.</p> <p>9 Q You did not tell Mr. Demo that there was</p> <p>10 some possibility that assets that were held by</p> <p>11 CDO Fund had been transferred -- strike that.</p> <p>12 You never told anyone at the Pachulski</p> <p>13 firm that assets that CDO Fund held with respect</p> <p>14 to Multi Strat may have been transferred to</p> <p>15 Sentinel, correct?</p> <p>16 A That's correct.</p> <p>17 Q Why not?</p> <p>18 A So I'm at the point where -- well, let me 19 rephrase. In my research I arrived at at least a 20 preliminary conclusion, that that asset had been 21 extinguished back in 2011.</p> <p>22 Q Did you share that conclusion with</p> <p>23 Mr. Demo?</p> <p>24 A I told him that that was a concern of mine 25 and that I was still trying to track it down and I</p>

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1 told him that was my preliminary conclusion.		1 Multi Strat position being written off.	
2 Q When did you tell him that?		2 Do you see that?	
3 A It was around this time period.		3 A I do.	
4 Q When?		4 Q And if you look, you can see then on the	
5 A It was in August of 2020.		5 first page of the attachment that write-off	
6 Q And did you tell him to share that		6 occurred August 11th, 2017. Do you see that?	
7 information with UBS?		7 A I do see that's what it says.	
8 A I didn't give him any instructions on what		8 Q And you recall, of course, in your	
9 to share with UBS one way or another.		9 Appendix 1, there was an amount identified for	
10 Q Did you advise ever affirmatively that		10 CDO Fund's interest in Multi Strat as of April	
11 they should not share that information with UBS?		11 2017, right?	
12 MS. SMITH: Objection, form.		12 MS. SMITH: Objection, form. What are you	
13 A I don't remember -- I don't remember if we		13 referring to on the exhibit?	
14 talked about it. I do remember that I was		14 MR. CLUBOK: Let me restate the question.	
15 concerned that if we didn't have the answer, that		15 BY MR. CLUBOK:	
16 was going to create more -- that if we gave a		16 Q You know that August 11, 2017, was the	
17 partial -- well, let me start over.		17 date that the transfers of substantially all of	
18 I was concerned that if we told them -- if		18 CDO Fund's assets were made to Sentinel?	
19 we told you where we were, that was going to		19 A I knew that it took place in August of	
20 create more problems because we had uncertainty		20 2017. I didn't know the exact date, but yes.	
21 and that was not an easy thing to say.		21 Q Right. So you directed Mr. Seery and	
22 BY MR. CLUBOK:		22 Mr. Ellington -- sorry, you directed Mr. Seery and	
23 Q My question is did you ever affirmatively		23 Mr. Demo to an attached that showed the	
24 advise them not to share information about		24 Multi Strat position being written off on	
25 CDO Fund's possible ownership interest in		25 August 11th, 2017, right?	
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1 Multi Strat with UBS?		1 A I see that.	
2 A I don't remember one way or another.		2 Q And did you also affirmatively say, oh,	
3 Q Let's mark a document as Exhibit 73.		3 and by the way, that was the time when	
4 (Deposition Exhibit 73 marked for		4 substantially all of CDO Fund's assets, including	
5 identification.)		5 any interest it may have had in Multi Strat, were	
6 BY MR. CLUBOK:		6 attempted to be transferred to Sentinel? Did you	
7 Q I'm going to mark an e-mail from you to		7 say that, in words or substance, in any way to	
8 Mr. Seery, dated August 21st, as Exhibit 73. And		8 Mr. Seery or Mr. Demo in connection with the	
9 it's got an attachment that says Screenshot:		9 statement directing them to the attached that	
10 WSO_Trade_No.9684001.pdf. We'll have the cover		10 showed the Multi Strat position being written off?	
11 e-mail and the two-page attachment marked		11 MS. SMITH: Objection, form.	
12 collectively as Exhibit 73.		12 A At -- I did not mention Sentinel in the	
13 And at the bottom of this e-mail chain,		13 context of these documents. I was still	
14 you say to Jim Seery, copying Scott Ellington and		14 researching why the financial records showed what	
15 Greg Demo and James Romey, that here's a revised		15 they showed.	
16 package of UBS documents without mention of		16 BY MR. CLUBOK:	
17 Multi Strat.		17 Q Well, but you're still researching why the	
18 MS. SMITH: Can you read that?		18 records showed a write-off on the exact day in	
19 BY MR. CLUBOK:		19 August of 2017 when you had been told that all the	
20 Q Do you see that?		20 assets of CDO Fund were supposed to be transferred	
21 A Yes.		21 to Sentinel for an after-the-event insurance	
22 Q And you at the top of the e-mail say:		22 policy, correct?	
23 All - I do -- and in all caps, underlined -- NOT		23 MS. SMITH: Objection, form.	
24 want to include this in the UBS package until we		24 A My concern is that that write-off should	
25 discuss, but please see attached showing the		25 have actually taken place much, much earlier.	

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1 BY MR. CLUBOK:		1 supposedly traded and settled August 11th, 2017,	
2 Q I understand what you're saying now, but		2 correct?	
3 the fact is you did know that that write-off that		3 A It shows that it was written off on that	
4 you referred them to was the date that all of the		4 date. Any entry in WSO generates a "trade ticket"	
5 assets of CDO Fund were supposed to be transferred		5 even if it's not technically a trade.	
6 to Sentinel, correct?		6 Q But, in fact, it says, Trade Type, Sell,	
7 MS. SMITH: Objection, form.		7 on the document, correct?	
8 A I knew that the ATE transfer had taken		8 A It says sell because it's -- well, because	
9 place on or about August 2017.		9 it's coming from the perspective of Highland	
10 BY MR. CLUBOK:		10 CDO Fund. So, yes, that's what it says.	
11 Q And when you referred them to this		11 Q Then it says the counterparty is just a	
12 document that showed a write-off for this asset		12 write-off, supposedly, pursuant to this document,	
13 related to Multi Strat as of that date, you failed		13 right?	
14 to mention that, correct?		14 A It does say that.	
15 MS. SMITH: Objection, form.		15 Q But, in fact, following August 11th, 2017,	
16 A I did not mention that.		16 Sentinel appeared as a significant redeemer in	
17 MR. CLUBOK: Let's go off the record.		17 Multi Strat; isn't that true?	
18 MS. SMITH: Good. Because I need to take		18 A I'm sorry, after which date, sir?	
19 a break.		19 Q Following -- after -- at some point after	
20 THE VIDEOGRAPHER: We are off the record		20 August of 2017, Multi Strat started showing up as	
21 at 7:04 p.m.		21 one of the significant redeemers in the interest	
22 (Recess taken from 7:04 p.m. CDT to		22 in Multi Strat, correct?	
23 7:25 p.m. CDT)		23 MS. SMITH: Objection, form.	
24 THE VIDEOGRAPHER: The time is 7:25 p.m.		24 A I'm sorry, you lost me, sir.	
25 We are back on the record.		25 MR. CLUBOK: Beg your pardon?	
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1 BY MR. CLUBOK:		1 MS. SMITH: Objection, form.	
2 Q Mr. Leventon, referring back to		2 BY MR. CLUBOK:	
3 Exhibit 73, this was the cover sheet e-mail on the		3 Q At some point after August of 2017,	
4 first page that -- in which you said you did not		4 Sentinel shows up on a list of redeemers with	
5 want to include certain information in the UBS		5 respect to the Multi Strat partnership, correct?	
6 package until you discussed, and then you referred		6 A At some point Sentinel does show up as a	
7 Mr. Seery and Mr. Demo and Mr. Romey, copying		7 redeemer from Multi Strat.	
8 Scott Ellington, to the attachments showing the		8 Q And I'm going to hand you what's been	
9 Multi Strat position being written off in August		9 marked as Exhibit 74, which is a two-page cover	
10 of 2017. Do you see that?		10 e-mail with an attachment that says Request for	
11 A Sorry, I'm losing a little focus. I think		11 Redemption of Shares, that purports to be with	
12 what you represented is what the document says.		12 respect to an entity called Sentinel Reinsurance	
13 Q Right.		13 to Highland Multi Strategy Credit Fund.	
14 A Yeah.		14 (Deposition Exhibit 74 marked for	
15 Q And so we looked at the first attachment		15 identification.)	
16 to Exhibit 73, but I want to refer you to the		16 BY MR. CLUBOK:	
17 second attachment to Exhibit 73, which you --		17 Q Do you see Exhibit 74? Do you see	
18 which according to the attachments is a WSO Trade		18 Exhibit 74, sir?	
19 No. 9684001. Do you see that?		19 A Yes. I haven't had a chance to review it	
20 A Yes.		20 yet.	
21 Q And that shows -- what is this document?		21 Q Well, I just want to ask you something	
22 A So this is what's called a WSO trade		22 simple. If you look at the request for redemption	
23 ticket.		23 of shares for Sentinel Reinsurance, have you ever	
24 Q And this document reflects the fact that		24 seen this request before today, as far as you	
25 the interest in Multi Strat for CDO Fund was		25 know?	

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1 A I don't recall ever having seen this before.		1 who they are, but they weren't affiliated with Highland or Dondero or anybody in any way.	
3 Q Did you know that Sentinel Reinsurance was listed as a redeemer with respect to Multi Strat?		3 Q So you're saying based on the research you've done, any interest that Sentinel believes they obtained in August of 2017 from CDO Fund in Multi Strat is nonexistent?	
5 A I think I did, yes.		7 A That was my preliminary conclusion.	
6 Q And did you ever, in words or substance, convey any issues that you might have had with respect to Sentinel's supposed stake in Multi Strat based on any of the work you did?		8 Q And did you share that specific conclusion with Mr. Demo?	
10 A I'm sorry, I don't understand that question, sir.		10 A The conclusion I shared with him was that I thought that those interests may have been wiped out in 2011 and that that was my preliminary conclusion.	
12 Q Did you ever talk to either the directors or the Pachulski firm about Sentinel's redemption interest in Multi Strat?		14 Q And did you ever tell anyone at Sentinel that that's the conclusion you reached, that what they have on their books as a redemption interest is really worthless as far as you believe?	
15 A I know that there were extensive discussions about redeemers in that fund, but I don't remember if there was a specific discussion about Sentinel.		18 A I don't generally talk to any -- I'm trying to -- I don't want to say at Sentinel because that's characterizing what people's roles are, but I do remember at one point telling Mr. DiOrio this may not exist.	
19 Q Did you ever mention, in words or substance, that Sentinel had some connection to Jim Dondero or Scott Ellington, to either the directors or the Pachulski firm?		23 Q When was that?	
23 A I never spoke to them about it one way or another.		24 A You may not own this.	
25 Q And did you ever -- in the course of that		25 Q When did you tell Mr. DiOrio that?	
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1 research you did with respect to CDP Fund's interest, if any, in Multi Strat, to the extent that they were -- one of the conclusions you came to was that they may have been extinguished in 2011 or '12?		1 A Would have been August or September 2020.	
6 A Yes.		2 Q Around the time you were tasked with tracking down what happened with CDO Fund's assets?	
7 Q How were they extinguished? By a sale? By them just disappearing? By redemption? How?		5 A Yes.	
9 A Restructuring.		6 Q And so you -- why did you go to Mr. DiOrio to share this belief you had with respect to Sentinel's interest or lack thereof in Multi Strat? Why Mr. DiOrio, of all the people you could have told?	
10 Q What do you mean?		11 A I believe he was on the board of Sentinel.	
11 A So if the interests were -- if the limited partnership interest was at the level that we colloquially called MVCDO, my understanding was that MVCDO had issued notes prior to the financial crisis and then it went through a restructuring transaction sometime in 2011, where the notes essentially wiped out the equity holders and then noteholders became the new equity of MVCDO and then, I think, they had to be essentially redeemed out in cash over time.		12 Q You knew he was a director at the time of Sentinel, right?	
21 Q Who redeemed out the cash interest in Multi Strat?		14 A Actually, I didn't. I knew he was -- had day-to-day responsibility kind of for Sentinel, but I don't actually know he was a director.	
23 A The noteholders.		17 Q You just imagined right now when you said you knew he was on the board?	
24 Q Who were they?		19 A Well, I know today that he was on the board.	
25 A Third-party investors. I don't remember		21 Q How do you know today?	
		22 A Really through this discovery and lawsuit process.	
		24 Q Who told you?	
		25 A I don't recall. I may have gotten it from	

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<p style="text-align: right;">353</p> <p>1 Mr. DiOrio, I may have gotten it from counsel who 2 got it from Mr. DiOrio.</p> <p>3 Q So you've spoken with Mr. DiOrio about 4 this process?</p> <p>5 A About this deposition?</p> <p>6 Q About this litigation -- this adversary 7 proceeding.</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 A No, what I said was I either found out 10 that he was a director -- it wasn't -- I mean, I 11 either found out that he was a director from him 12 or I found out from outside counsel.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q You spoke --</p> <p>15 MS. SMITH: Objection, I don't want him to 16 reveal privileged information.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q I'm not asking about what you found out 19 from your lawyers. But you have spoken with 20 Mr. DiOrio about this -- about the subject of this 21 adversary proceeding, correct?</p> <p>22 A I'm trying to parse out -- well, I'm 23 trying to parse out what conversations I would 24 have had with him -- I mean, really, the 25 conversations I would have had with him, if any,</p>	<p style="text-align: right;">355</p> <p>1 A That's right.</p> <p>2 Q And so you went to him -- he didn't -- did 3 he task you with reporting to him your views about 4 Sentinel's redemption interest in Multi Strat?</p> <p>5 A No.</p> <p>6 Q But you affirmatively made the choice to 7 go tell him that, you thought that was information 8 that was important for him to know, correct?</p> <p>9 A I decided to tell him.</p> <p>10 Q And you didn't make a similar decision to 11 tell Mr. Seery or the Pachulski lawyers about that 12 subject at the time, correct?</p> <p>13 A I did tell them the same thing at the 14 time.</p> <p>15 Q No, you didn't tell them that Sentinel's 16 interest -- redemption interest in Multi Strat 17 might be worthless, like you told Mr. DiOrio, 18 correct?</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 A We -- I don't think we ever talked about 21 Sentinel's redemption interest.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q Right. So you told Mr. DiOrio that the 24 interest that Sentinel believed it had purchased 25 from CDO Fund that was on the books as a</p>
<p style="text-align: right;">354</p> <p>1 would have been including our lawyers.</p> <p>2 Q You had a conversation with Mr. DiOrio 3 with your lawyers present?</p> <p>4 A I honestly don't remember, sir. I don't 5 remember how I found out. It was one of those two 6 ways.</p> <p>7 Q Did you have any conversations with any 8 other witnesses with your lawyers present about 9 the subject matter of this adversary proceeding?</p> <p>10 A We spoke about motions that were pending.</p> <p>11 Q Did you talk about the substance of this 12 adversary proceeding with other individuals 13 involved in this proceeding in your lawyers -- in 14 one group meeting?</p> <p>15 A No. We would have -- our group meetings 16 would have addressed pending procedural motions.</p> <p>17 Q Okay. But Mr. DiOrio at some point during 18 one of those group meetings disclosed that he was 19 a director of Sentinel?</p> <p>20 A Again, I don't recall if he disclosed that 21 or if I was told that by my outside counsel.</p> <p>22 Q But back -- so back in 2017 -- sorry, back 23 in 2020, you didn't know he was the director, you 24 just understood he had day-to-day responsibility 25 for Sentinel at the Highland organization?</p>	<p style="text-align: right;">356</p> <p>1 redemption interest might be worthless in your 2 view, or words to that effect, correct?</p> <p>3 A I think that's fair.</p> <p>4 Q But you didn't tell that same information 5 to Mr. Seery or any of the Pachulski lawyers, 6 correct?</p> <p>7 A I think I more talked about --</p> <p>8 Q Is that yes or no? I didn't ask what you 9 more talked about.</p> <p>10 A Fair enough.</p> <p>11 Q I just want to ask about this.</p> <p>12 A I didn't talk about Sentinel at all with 13 the Pachulski lawyers.</p> <p>14 Q Even though you affirmatively went to 15 Mr. DiOrio to tell him that, correct? Correct?</p> <p>16 A I did not speak to the Pachulski lawyers 17 about Sentinel, that I recall.</p> <p>18 Q Okay. Getting back to subject we talked 19 about earlier today -- oh, you said you had 20 discussions with Mr. DiOrio about the ATE policy. 21 You said there were two people you've ever spoken 22 to about it, Mr. DiOrio and Mr. Ellington, right?</p> <p>23 A That's not 100 percent accurate.</p> <p>24 Q Okay. What is -- why is that not 25 accurate?</p>

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1 A I mean, I had already spoken to		1 that was being contemplated that we talked about	
2 Mr. Sevilla about the ATE policy.		2 in April of 2017, you know the settlement that had	
3 Q Okay. But Mr. DiOrio, what, if anything,		3 the first step being purchase a \$100 million	
4 did you talk to him about with respect to the		4 ATE policy from Sentinel using substantially all	
5 ATE policy, other than this subject?		5 of the assets of CDO Fund, HFP -- remember that	
6 A On an annual basis, we would talk to		6 discussion?	
7 Beecher Carlson and he would set up those		7 A I remember we had a discussion around a	
8 conversations.		8 document from April of 2017 related to settlement	
9 Q On an annual basis, meaning 2017, 2018,		9 analysis.	
10 2019 and 2020?		10 Q Prior to that contemplated transaction,	
11 A I think that's right, yes.		11 was there another potential transaction that would	
12 Q How about 2021, before you were		12 have resulted in a settlement whereby there would	
13 terminated?		13 be some new company established that would	
14 A I don't think so.		14 purchase claims from UBS as part of a settlement	
15 Q Who is responsible for speaking to Beecher		15 structure that you were involved in helping draft?	
16 Carlson in 2021 about the policy?		16 A That would buy claims from UBS?	
17 A I don't know. Not me.		17 Q Yeah. That as part of a settlement would	
18 Q Did you ever suggest to anyone, in words		18 result in some new company in the Caymans	
19 or substance, that they should make a claim on a		19 purchasing claims from UBS and then settling those	
20 policy once you learned about the judgment in the		20 claims with the funds so that the funds would end	
21 New York litigation?		21 up still insolvent to avoid the tax liability? Is	
22 A I don't remember if I spoke -- if I did,		22 that a concept that you ever were involved in	
23 it would have been with Mr. Ellington.		23 discussing with anyone?	
24 Q And did you suggest, in words or		24 A Not that I recall.	
25 substance, that Mr. Ellington should cause a claim		25 Q Anyone ever raise the fact that the -- all	
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1 to be made on the ATE policy?		1 these ideas of transferring assets were	
2 A I may have. I just don't remember.		2 potentially illegal efforts to avoid taxes?	
3 Q You don't remember at all whether you did		3 MS. SMITH: Objection to form.	
4 or didn't?		4 BY MR. CLUBOK:	
5 MS. SMITH: Objection, form.		5 Q Did anyone ever raise that possibility in	
6 BY MR. CLUBOK:		6 any of the discussions you had?	
7 Q That's what you're saying?		7 A No, no one ever said anything like that.	
8 A That's correct.		8 Q Okay. And I believe this may be the last	
9 Q Did you believe that he should -- strike		9 topic, I think. You -- we asked you earlier about	
10 that.		10 Skyview Legal PC. Asked you about whose idea it	
11 Did you believe that a claim should have		11 was to start it. Can you answer that question	
12 been made on the ATE policy at any point while you		12 now?	
13 were still employed with Highland?		13 A Yes. It was -- the idea for it came from	
14 A I don't know that I came to a view one way		14 a gentleman by the name of Jim McCormack, who	
15 or another.		15 is -- was a legal ethics counsel that we retained.	
16 Q You might have, but you just don't know if		16 Q Why?	
17 you did or you didn't?		17 A Skyview Group wanted to determine if it	
18 A I don't remember -- I might have. I don't		18 was providing legal services. And if it was	
19 remember.		19 providing legal services, if that was appropriate	
20 Q And did you ever share any view about		20 under its current structure or whether or not it	
21 whether a claim should be made on the policy with		21 needed to essentially create an affiliated law	
22 any of the independent directors or with the		22 firm or a dedicated law firm in order to avoid	
23 Pachulski lawyers?		23 unauthorized practice of law issues.	
24 A No.		24 Q Okay. And you're the sole director at	
25 Q Prior to April -- prior to the transaction		25 this point of Skyview Legal PC?	

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<p>1 A I am, I think. We just formed it like a</p> <p>2 couple weeks ago.</p> <p>3 Q Okay. And then I do have one last</p> <p>4 document that my colleague handed me that I'm</p> <p>5 going to just ask you about, and that's</p> <p>6 Exhibit 75.</p> <p>7 (Deposition Exhibit 75 marked for</p> <p>8 identification.)</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q It's a one -- it's a double-sided,</p> <p>11 single-page document that reflects an e-mail</p> <p>12 exchange that starts with an e-mail from me to</p> <p>13 Scott Ellington, copying some other counsel, which</p> <p>14 is then forwarded to you and Scott Ellington and</p> <p>15 Scott Ellington confirms approved.</p> <p>16 MS. SMITH: What number are we on?</p> <p>17 MR. CLUBOK: 75. Thank you.</p> <p>18 MS. SMITH: I missed 74.</p> <p>19 MR. CLUBOK: Exhibit 75.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q And this is an e-mail chain that is from</p> <p>22 December 2nd, 2019, the subject, Confirmation of</p> <p>23 our understanding. And I asked Mr. Ellington to</p> <p>24 respond confirmed if you agree that it reflects</p> <p>25 our discussion. And the first item is that we</p>	<p>1 A I think that's a fair -- I'm just reading</p> <p>2 bullet point 2, but that sounds like a fair</p> <p>3 characterization of that bullet point.</p> <p>4 Q Okay. And Scott -- Angela Somers sends an</p> <p>5 e-mail to you and Scott Ellington, asking to</p> <p>6 confirm that you've agreed to the terms below</p> <p>7 since we were not involved in these discussions</p> <p>8 and we assumed you've worked with bankruptcy</p> <p>9 counsel on the stay relief and possible claim.</p> <p>10 Do you see that?</p> <p>11 A Yes.</p> <p>12 Q And then Mr. Ellington writes back, yes,</p> <p>13 approved, in response to that question from</p> <p>14 Ms. Somers. Do you see that?</p> <p>15 A Yes.</p> <p>16 Q Was that truthful what Mr. Ellington said</p> <p>17 in that e-mail?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q As far as you knew at the time?</p> <p>21 A That he had agreed to the terms below?</p> <p>22 Q Yes.</p> <p>23 A I had no idea. I wasn't involved in those</p> <p>24 conversations between you and Mr. Ellington.</p> <p>25 Q Did you know whether he had worked with</p>
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<p>1 were going to tell the Court that we are committed</p> <p>2 to having good faith settlement discussions, and</p> <p>3 we asked the Court to hold the opinion and the</p> <p>4 attached judgment, the form of which we have</p> <p>5 already agreed to and advised her of such during</p> <p>6 our call, for another ten business days from today</p> <p>7 with the possibility we'll extend further as</p> <p>8 needed.</p> <p>9 Do you see that?</p> <p>10 A I do.</p> <p>11 Q So you were aware that the Court had</p> <p>12 already made a decision awarding roughly a billion</p> <p>13 dollars in damages, at least as of December 2nd,</p> <p>14 2019, although that had not yet been made public,</p> <p>15 correct?</p> <p>16 A Correct.</p> <p>17 Q And we agreed also that we were going to</p> <p>18 tell the Court that we planned to enter into the</p> <p>19 attached stipulation, which was an agreed upon</p> <p>20 request for relief from automatic stay, correct?</p> <p>21 A Are you talking about bullet point 2?</p> <p>22 Q Yeah. If a settlement could be resolved,</p> <p>23 the parties were going to jointly request relief</p> <p>24 from automatic stay according to this</p> <p>25 understanding, correct?</p>	<p>1 bankruptcy counsel on the stay relief and possible</p> <p>2 claim?</p> <p>3 A I didn't know one way or another.</p> <p>4 Q Did you ask him whether or not what he</p> <p>5 said was true on this e-mail that you were copied</p> <p>6 on, or that was actually sent to you by Angela?</p> <p>7 A No, I never asked him if his statement was</p> <p>8 true or false.</p> <p>9 Q Did you follow up at all?</p> <p>10 A I saw no reason to follow up, so no, I</p> <p>11 didn't.</p> <p>12 Q As part of the good-faith settlement</p> <p>13 discussions, do you know whether or not</p> <p>14 Mr. Ellington ever disclosed that there was a</p> <p>15 after-the-event insurance policy that could be</p> <p>16 used to satisfy a judgment in the New York</p> <p>17 litigation?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 A I wasn't part of Mr. Ellington's</p> <p>20 conversations with you. I don't know.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q But you knew at the time that there was an</p> <p>23 ATE policy that could be used to satisfy the</p> <p>24 judgment that was about to be made public,</p> <p>25 correct?</p>

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1 A I knew of the existence of the ATE policy,		1 in my face.	
2 yes.		2 Q I totally understand.	
3 Q Did you make any effort to disclose that		3 Sir, in December of 2019, you understood	
4 to UBS?		4 that there was roughly 80 to \$100 million of	
5 MS. SMITH: Objection, form.		5 insurance money available to the defendants in the	
6 A I didn't -- I didn't talk to -- the only		6 New York litigation to either satisfy the judgment	
7 person that would be UBS would be you and I didn't		7 or settle the claims, correct?	
8 talk do you about this.		8 A I knew that there was 80 to \$100 million	
9 BY MR. CLUBOK:		9 of insurance on the after-the-event policy with	
10 Q So you made no effort to disclose in any		10 Sentinel so that, yeah, probably could be used to	
11 way to UBS through counsel that there was an		11 settle or pay some amounts to UBS.	
12 ATE policy from Sentinel that could be invoked to		12 Q And did you ever, you ever cause that	
13 pay up to roughly \$91 million or more with respect		13 information to be transferred or communicated --	
14 to the judgment in the New York litigation,		14 sorry. Did you ever cause that information to be	
15 correct?		15 communicated to UBS in any way?	
16 MS. SMITH: Objection, form.		16 MS. SMITH: Objection, form.	
17 A I never -- I'm sorry, I got lost in who		17 A I did not -- I didn't -- did I cause that	
18 all the people were that I didn't speak to.		18 information to be communicated to UBS? I didn't	
19 BY MR. CLUBOK:		19 instruct people what to tell UBS; they instructed	
20 Q Okay. This is my last question, so I just		20 me. So, no, I -- we never -- that never came up.	
21 want to -- I'll try to say this as simply as		21 BY MR. CLUBOK:	
22 possible. I'll break it down.		22 Q And you knew at the time, that UBS was a	
23 A Okay.		23 creditor in the restructuring, correct?	
24 Q You knew as of December 2nd, 2019, that		24 A You mean in the Highland bankruptcy?	
25 the Court was about to enter judgment of roughly a		25 Q Sorry. You knew at the time that UBS was	
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1 billion dollars, correct?		1 a creditor in the Highland bankruptcy, correct?	
2 A Yes.		2 A Yes.	
3 Q And you knew that there was an ATE policy		3 MR. CLUBOK: That's all I have. Thank	
4 that could be used to satisfy that judgment or to		4 you.	
5 settle the remaining claims, correct?		5 THE VIDEOGRAPHER: This concludes the	
6 A I knew about the ATE policy and that it		6 videotaped deposition of Isaac Leventon. The time	
7 could be used to pay UBS some amounts.		7 is 7:52 p.m. We are off the record.	
8 Q And you knew that the amount was roughly		8 (Deposition concluded at 7:52 p.m. CDT)	
9 \$100 million, maybe minus the legal fees that you		9	
10 had already authorized to be paid, correct?		10	
11 A I don't think I knew the exact amount, no.		11	
12 Q But you knew it was in the neighborhood of		12	
13 \$100 million at the time?		13	
14 A My recollection is somewhere between 80		14	
15 and 100, but I wasn't sure where. It was clearly		15	
16 a big number.		16	
17 Q Okay. You understood that there was		17	
18 roughly 80 to \$100 million of insurance money		18	
19 available to either satisfy the judgment or to		19	
20 settle the claims that were the subject of the		20	
21 judgment in the New York litigation, correct?		21	
22 A Can you repeat that one more time? Sorry,		22	
23 the sun literally was right in my eyes.		23	
24 Q That is totally fine. This is really it.		24	
25 A I'm not trying to play games. The sun was		25	

